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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 06.10.1999
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**COMMUNICATION FROM THE COMMISSION
TO THE COUNCIL**

**Request by the Italian Government for authorisation to introduce a measure
derogating from Council Directive 92/81/EEC, based on Article 8(4) of that
Directive, in respect of a reduced rate of excise duty on automotive diesel fuel for
commercial vehicles**

1. Introduction

- (a) In accordance with Council directive 92/81/EEC, Member States are required to apply the harmonised system for the structures of excise duties on mineral oils. Under Article 8(4) of that Directive, the Council may authorise any Member State to introduce further duty exemptions or reductions for specific policy considerations.
- (b) In a series of letters from the Office of the Italian Permanent Representation, culminating in a letter received by the Commission's Secretariat General on 29 June 1999, the Commission was informed of a measure aimed at reducing the excise duty on automotive diesel oil for certain commercial vehicles.
- (c) In a letter from the Commission's Secretariat General dated 28 July 1999, the other Member States were informed, in accordance with Article 8(4) of the above Directive, of the measure proposed by the Italian Government. Under the same Article, the Commission or any Member State may request that the Council consider the matter.

2. Description of the measure

Italy has modified its mineral oils duty system to incorporate tax levels based on the CO2 emissions of the fuels. This will result in an annual increase of duty on mineral oils until 2005.

During the same period, there will be an equivalent reduction in the current circulation tax surcharge for private diesel vehicles. This will result in the operating costs of these vehicles remaining effectively unchanged. However, diesel powered commercial vehicles have not been subject to the special surcharge and will face increased costs as a result of the duty increases.

The Italian authorities therefore wish to introduce a mechanism that will allow road haulage operators who carry goods on behalf of third parties to reclaim the extra duty. This is similar in concept to other schemes already in place in the Netherlands and France although it differs in detail as it only applies to the diesel powered commercial vehicles operated by professional hauliers. It would not apply to the same vehicles used by enterprises in transporting their own goods.

For hauliers within the Italian tax system, the repayment will be made using an offset system, either monthly or quarterly, initially on a provisional basis using the equivalent consumption figures from the previous year. These will then be corrected at the end of each tax year using the actual consumption figures. Non Italian EU hauliers will also be eligible for repayment but would be required to register with the Transport Ministry and submit claims to the Finance Ministry via a fiscal representative.

3. Commission's opinion

The procedure provided for in Article 8(4) of Council Directive 92/81/EEC permits Member States to introduce exemptions or reductions in excise duty for specific policy considerations.

The tax system modification introduced by the Italian Government has been based on environmental concerns. They have informed the Commission that the new system makes it possible to harmonise the system of duties on fossil fuels with regard to the standards adopted by the European Commission. Furthermore it also provides a mechanism for taxing Carbon Dioxide (CO₂) emissions from various fuels according to their Carbon content, thus discouraging the use of the more polluting fuels.

The excise duty derogation requested by the Italian Government would be to compensate road hauliers who transport goods on behalf of third parties for their additional costs caused by increases in excise duty on automotive diesel under the new tax system, and therefore help them adapt to the new situation.

The Commission has previously agreed that tax differentials in the transport sector are acceptable under State Aid rules if they are intended to ensure the attainment of agreed objectives under the Common Transport Policy and also respect the minimum rates of excise duty set out in Council Directive 92/82/EEC. Tax differentials helping to achieve certain well-defined environmental objectives, in principle fall into this category.

However, the Italian Government's derogation request limits the application of the derogation to road haulage operators engaged in the transport of goods for third parties. This limitation introduces a discriminatory factor absent from the earlier derogations. It means that enterprises that use their own diesel-powered commercial vehicles to transport their own goods are put at a competitive disadvantage to "professional hauliers".

In this regard, the Commission would also point to the decision of the European Court of Justice in case number C-6/97 (Italian Republic v Commission). Here the Italian Republic failed in its action seeking the annulment of Commission Decision 97/270/EC of 22 October 1996 on a tax credit scheme introduced by Italy for professional road hauliers.

In general terms, the scheme offered tax credits to Italian road hauliers and compensatory payments for non-Italian Community hauliers to refund part of their fuel costs. The effect of the scheme was to aid Italian road hauliers operating for hire or reward by favouring them as compared with own-account hauliers through a temporary exemption from a general system of taxation.

The Commission considered that this constituted an exemption that was not justified on the basis of the nature or general scheme of the system and therefore was not a general measure. It adopted Decision 97/270/EC which said that the scheme of aid in favour of professional road hauliers introduced in the form of a tax credit was incompatible with the common market within

the meaning of Article 92(1) of the Treaty (now after amendment Article 87) in so far as it met none of the conditions for exemption provided for in Article 92(2) and (3).

The Italian Republic sought to have this decision annulled by the European Court of Justice, however in its judgement of 19 May 1999, the Court ruled that "the arguments alleging that the tax credit scheme is not in the nature of aid must therefore be rejected".

The Commission recognises that the tax credit scheme and the excise duty derogation requested by the Italian Government are of course not identical. However, the derogation request would have exactly the same effect as the tax credit scheme. It would upset the balance of competition between own-account hauliers and hauliers for hire or reward by giving aid to only to the latter category.

Furthermore, the Commission considers that the procedure proposed for the refunding of the diesel excise duty increases to non-Italian hauliers appears to create a new administrative burden on them and could also delay the reimbursement of the appropriate tax amount thereby having a discriminatory, adverse effect on them.

4. Conclusion

Tax differentials in the transport sector can be acceptable under State Aid rules if they are intended to ensure the attainment of agreed objectives under the Common Transport Policy, including environmental objectives, and also respect the minimum rates of excise duty set out in Council Directive 92/82/EEC. The Commission can therefore accept the principle of tax differentials that apply in a non-discriminatory way and seek to temporarily compensate companies and help them adapt to additional costs that they have to bear as a result of a shift in the tax system on environmental grounds.

However, the Commission does have fundamental objections to the application of this derogation request from Italy. Although it seeks to give compensation to counter tax increases arising from a shift towards a more environmentally friendly tax system, it applies only to road haulage operators engaged in the transport of goods for third parties. It means that enterprises that use their own diesel-powered commercial vehicles to transport their own goods are put at a competitive disadvantage to hauliers operating for hire or reward. This limitation introduces a discriminatory factor absent from other, similar derogations granted by the Council to other Member States.

Furthermore, the Commission considers that the procedure proposed for the refunding of the diesel excise duty increases to non-Italian hauliers appears to create a new administrative burden on them and could also delay the reimbursement of the appropriate tax amount thereby having a discriminatory, adverse effect on them.

In view of these fundamental objections, the Commission requests that the Council consider the matter according to the third sub-paragraph of Article 8(4) of Directive 92/81/EEC.