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Accompanying the

Proposal for a

COUNCIL DIRECTIVE

amending Directive 2003/96/EC as regards the adjustment of special tax arrangements for gas oil used as motor fuel for commercial purposes and the coordination of taxation of unleaded petrol and gas oil used as motor fuel

Summary of the impact assessment

{COM(2007) 52 final}
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This report commits only the Commission's services involved in its preparation.

INTRODUCTION

The White Paper on Transport *European transport policy for 2010: time to decide*[1], noted that with the road transport sector now fully opened up to competition, the absence of harmonised fuel taxes seemed increasingly to be an obstacle to the smooth functioning of the internal market. It concluded on this issue by stressing the need to make the tax system more consistent by proposing uniform taxation for commercial road transport fuel in order to round off the internal market. An initial proposal relating to the taxation of commercial diesel was presented in 2002[2] but withdrawn in the context of the screening of legislative proposals pending before the Legislator[3]. However, the Commission also announced its intention to reconsider the need for legislative intervention in the light of the results of a comprehensive impact assessment.

In its recent Communication to the Council and the European Parliament - COM(2006) 314, 22.6.2006, Keep Europe moving – Sustainable Mobility for our continent, Mid-term review of the European Commission's 2001 Transport White Paper -, the Commission noted that it "*will examine how excessive differences in fuel tax levels can be narrowed*". It also stressed that "*transport policy is closely intertwined with energy policy, on the basis of common objectives: lowering CO_2 emissions and reducing EU import dependency on fossil fuels*"[4] and underlined that "*international environmental commitments, including those under the Kyoto Protocol, must be integrated into transport policy*".

Consequently, the aim of this impact assessment is to assess the best way of reducing the distortions of competition and environmental damage related to excise differentials which affect haulage markets.

PROBLEM DEFINITION

The taxation of energy products and electricity in the Community is governed by the provisions of Council Directive 2003/96/EC[5] restructuring the Community framework for taxation of energy products and electricity (hereafter referred to as the “Energy Tax Directive” or the ETD), which lays down the taxable products concerned, the uses that make them liable to tax and the minimum rates of taxation applicable to each product depending on whether it is used as propellant, for certain industrial and commercial purposes or for heating. As regards gas oil, only the minimum rate of excise duties is harmonised across the Community viz. € 302 per 1000 litres from 1 January 2004 and € 330 from 2010.

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1 COM(2001) 370, 12.9.2001.

2 Proposal for a Council Directive amending Directive 92/81/EEC and Directive 92/82/EEC to introduce special tax arrangements for diesel fuel used for commercial purposes and to align the excise duties on petrol and diesel fuel - COM(2002) 410, 24.7.2002.

3 COM(2005) 462, 27.9.2005.

4 European Council, 23-24 March 2006.

5 Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for taxation of energy products and electricity (OJ L 283, 31.10.2003, p. 51); Directive last amended by Directives 2004/74/EC and 2004/75/EC (OJ L 157, 30.4.2004, p. 87 and p. 100).

The actual rates themselves differ a great deal from one Member State to another. For diesel (gas oil), 9 Member States do not yet comply with minimum rates because of transitional periods granted to take into account their specific situation and tax at levels of between € 220 and € 294. Thirteen Member States apply a rate at levels of between € 300 and € 400. Five Member States tax at a level greater than € 400, most notably (the atypical situation of) the United Kingdom (€ 693).

These differences have lead to fuel tourism. The huge capacity of big trucks allows them to cover distances of between 1 500 and 3 000 kilometres on a single tank. Hauliers involved in international activities or situated in or near the border of low-taxing countries carry out a kind of fiscal planning called fuel tourism: they refuel in low-tax countries, in order to benefit from an important competitive advantage.

In theory, since any driver is free to choose where to tank in the European Union irrespective of his country of origin, there should not be any distortions of competition. Nevertheless, because of geographical and business constraints, not all hauliers may be able to tank on the cheapest markets. Since different categories of hauliers competing on the same markets may not enjoy the same possibilities of purchasing low-taxed fuel, **fuel tourism creates distortions of competition:** the differences in fuel costs can be as high as 20% on a 1 000 km journey (fuel costs represent between 20 and 30% of haulage companies' operating costs).

Because of stiff competition on the haulage market, **the distortions of competition described above have consequences in terms of national market shares**. A study on bilateral road transport carried out by the French Transport Ministry noted significant changes in market shares of the European market[6] between 1997 and 2001. It concluded that two thirds of the variations observed between 1997 and 2001 could be attributed to three factors: tax differences on diesel, differences in corporate tax and the evolution of salaries between two given countries. Tax differences for diesel appeared to be the main factor, explaining some 40% of market share variations observed alone. Although it cannot be excluded that the impact of labour costs might be underestimated due to data homogeneity problems, this study indicates that excise duty differences significantly affect competition on the intra-EU international haulage market. **It should also be noted that differences in taxes create distortions of competition beyond the haulage market.** They also affect fuel stations and ports depending on their location across the EU, all the more so given that, unlike road hauliers, they are not mobile and thus cannot limit the impact of excise duty differences.

Fuel tourism has negative environmental consequences where detours are made. As rational operators, drivers will make use of differences in diesel prices as much as they can and tank in the Member State where it is the cheapest, while taking into account the additional costs involved. Cases where operators simply use the opportunity to tank "*en route*", without making any detours mainly amount to a shifting of consumption (and thus air pollutant emissions) that would in any event have taken place in one Member State or another. In contrast, when drivers make deliberate detours from their routes to take advantage of the differences in national excise duties, this has a net negative effects on the environment because of the longer distance driven.

[6] BIPE (2005), Evaluation des conséquences de la hausse du prix du gazole sur les entreprises de transport routier de marchandises, Etude réalisée pour le Ministère des Transports, de l'Équipement, du Tourisme et de la Mer.

A 1990 study concerning the Netherlands estimated that with a price difference of 0.14 to 0.16 ECU per litre compared to Belgium and Germany, 10 million extra kilometres, resulting from detour fuel tourism, were driven to refuel across the border[7]. Michaelis (2003)[8] showed that Germans are willing to drive 2 to 4 additional kilometres for each Euro cent price differential compared to a neighbouring country in case of diesel. **Significant detours therefore are made in order to tank.**

Fuel tourism leads to losses in budgetary resources for those Member States applying a relatively high excise duty on diesel. In Germany, the Schmid Traffic Service GmbH estimated that the tax loss from excise duties on mineral oils in 2004 resulting from fuel tourism (i.e. professional diesel) was € 1 915 000 000. The total loss is even higher and amounts to € 3.6 billion each year (besides excise duties on mineral oils, it comprises additional losses in VAT and excise duties on cigarettes, because of the reduced tax revenues from VAT and the reduced amounts of cigarettes sold at filling stations).

EXISTING INITIATIVES AND EUROPEAN ADDED VALUE OF THE PROPOSED INITIATIVE

To do more to confront transport users with real costs and to change price structures, the White Paper *European transport policy for 2010: time to decide,* indicates two additional actions:

– the harmonization of the minimum clauses in contracts governing transport activity in order to allow tariffs to be revised should costs increase (e.g. a fuel price rise), and

– the definition of common principles for charging for infrastructure use covering the different transport modes.

The first action was assessed by a comprehensive impact assessment in 2005. While five alternative policy options were identified[9], a first assessment lead to further analyses on the basis of three main orientations: i) amendment to Regulation (EEC) No 4058/89[10], ii) no policy change, iii) harmonisation of fuel taxes with minimum contract clauses. The results of the impact assessment confirmed to the Commission the need to make a proposal to modify special tax arrangements for gas oil fuel used for commercial purposes.

Secondly, on infrastructure charges, the Commission is required to present by June 2008, after examining all options including environment, noise, congestion and health-related costs, a generally applicable framework for the assessment of external costs for all modes of transport to serve as the basis for future calculations of infrastructure charges[11]. The proposed initiative is consistent with the future developments of infrastructure charges, since it offers more

[7] Effects at the border of a petrol tax increase on 1 January 1990, P. M. Blok and A. P. Muizer, Nederlands Economisch Instituut, TK 1990-1991, 21.665 Nr 3, Rotterdam.

[8] Michaelis (2003) Tanktourismus – eine Szenarioanalyse, In Zeitschrift für Verkehrswissenschaft.

[9] No policy change, amendment to Regulation (EEC) No 4058/89, harmonisation of fuel taxes, introduction of price insurances, and adequate regulation that works as an obstacle to outsourcing practices.

[10] Council Regulation (EEC) No 4058/89 of 21 December 1989 on the fixing of rates for the carriage of goods by road between Member States (OJ L 390, 30.12.1989 p. 1).

[11] OJ L 157, 9.6.2006, p. 8, amending Directive 1999/62/EC on the charging of heavy goods vehicles for the use of certain infrastructures.

flexibility for the implementation by Member States of both excise duties and road charges, while avoiding double taxation and without imposing additional burdens on operators[12].

OBJECTIVES OF THE PROPOSED INITIATIVE

The general objectives of the directive are:

- to narrow the differences in fuel tax levels,
- to reduce distortions of competition,
- to reduce damage to environment, notably by decreasing fuel tourism detours,
- to contribute to the sustainability of road transport and to foster growth, jobs and competitiveness via the reduction in the distortions of competition affecting markets.

POLICY OPTIONS

The Impact Assessment has considered five Policy Options. Four were already envisaged at the beginning of the impact assessment.

The first approach (option A) consists of not intervening further at Community level (the no policy change option).

The second option (option B) consists of programming full harmonisation between Member States of excise duties on commercial diesel. In 2018, the single rate would be € 400. Moreover, the rate applicable to unleaded petrol would not be less than that applied to commercial gas oil.

The third option (option C) consists of the enhanced approximation of excise duties applicable to commercial diesel. A fluctuation band would be set at Community level, with a minimum and a maximum tax rate. Member States would have to set the level of taxation applicable to commercial diesel within the band. The width of the fluctuation band should be progressively reduced to reach € 100 by 2010. In order to give time to Member States benefiting from transitional periods to adapt, the Commission services propose to retain the current minimum levels fixed by the ETD as the base line of the fluctuation band until 2013. Subsequently, two further sub-options were assessed: (i) from 1 March 2013, the band would be indexed (**option C1**) or (ii) the band would remain stable, but would take a higher minimum level than that currently fixed in the Energy Tax Directive i.e. € 359 per 1000 litres, the same minimum level that applies to unleaded petrol, in order to take into account the fact that both fuels are equally detrimental to the environment (**option C2**).

During the course of the impact assessment, the Commission decided to modify sub-options C by bringing forward to 2012 the date of implementation of indexation (option C1) and of equalization with unleaded petrol (C2) and to add a fifth option (C2+), in the light of the

12 By enabling Member States to reduce their excise rates below their 1 January 2003 level, (provided they respect the minimum rate and provided the amount of taxes remain stable), more Member States will be able to decouple commercial and non-commercial diesel and to reduce the differences in excise duties on commercial diesel.

results of public consultation and of econometric simulations. In all three C sub-options, those Member States benefiting from transitional periods will have to respect the new rates only when their transitional period has expired. In addition, the unleaded petrol tax rate would not be less than the rate applied to commercial gas oil.

Option C2+ consists of increasing the minimum level for diesel to € 359 but as early as 2012, and subsequently to € 380 in 2014, in order to prevent the real value of tax rate depreciating too much and to reduce the distortions of competition even further. In addition Member States will have no upper band limit to respect. Each Member State wishing to tax at a rate higher than the minimum level will be free to do so by finding a balance between the sustainability of its haulage industry, a better internalisation of environmental externalities and the need for budgetary resources.

In addition, in order to be consistent with other Community policies, options C1, C2 and C2+ provide that Member States, which apply or introduce a system of road user charges for motor vehicles using commercial diesel, may apply a rate to gas oil used by such vehicles lower than that applied 1 January 2003, as long as the overall tax burden remains broadly equivalent, and provided that the Community minimum level applicable to commercial gas oil is observed. This provision should facilitate the differentiation of the rates for commercial and non-commercial diesel for Member States wishing to decouple and provide more flexibility for reducing excise rate differentials.

COMPARISON OF THE POLICY OPTIONS

The assessment is based on the wide range of contributions produced by various stake holders through various means such as Public Consultation, position papers, articles, and meetings. In addition, the Commission has made a qualitative and quantitative analysis, using the results of three models in order to assess the impacts (Tremove, IPTS transport technologies model (Poles) and TRANSTOOLS).

The first approach (option A) will not solve the problem of distortions of competition currently existing on the haulage market, which has consequences in terms of market shares and employment (increase in low-taxing Member States to the detriment of high-taxing Member States). Option A will not address the problem of detours, which would result in consumption of a total of 42 500 million litres fuel between 2007 and 2030 and related pollutant emissions (2.2 million tons of CO_2). It was therefore not an option that the Commission chose to pursue.

The second option (option B) is the option that allows maximum reduction in distortions of competition, without increasing the administrative costs too much. Nevertheless, this option would oblige 22 Member States to increase their excise duty for commercial gas oil to reach the level of € 400 / 1000 l and 5 Member States to reduce their duty rates. It will lead to an increase in the rate applicable to unleaded petrol for 9 Member States from 2014 and may lead to an increase in non-commercial excise duty in two Member States (in case Germany and the United Kingdom decided to compensate the significant decrease in the commercial rate by an increase in the non-commercial rate). This option will be neutral for the car industry. From an environmental point of view, option B leads to a small increase in diesel consumption, a small decrease in consumption of unleaded petrol and a very small increase in pollutant emissions (in case fuel tourism is not taken into account). However, since it is the option that reduces the detours to the greatest extent, it is also the one that reduces to their minimum levels the related CO_2 emissions (0.1 million tons), pollutants and tax avoidance. From a social point of view, this is the option that might have the largest impact (although it is likely to remain modest), with less congestion and accidents on the roads, less working hours for drivers and the largest, albeit modest, employment shifts at regional/national levels. Nevertheless, option B will have the greatest negative impact on budgets (-€ 71,8 billion between 2007 and 2030, reduced to -€ 58,2 billion if the reduction in fuel tourism is taken into account). It was also considered not to be realistic from a political point of view. For all these reasons, this option was not pursued by the Commission.

Options C1, C2 and C2+:

Option C1 and option C2 imply an increase in gas oil excise duty in 18 Member States by 2014, against 21 in option C2+. Whereas option C2 will have no influence on unleaded petrol excise duties, C1 and C2+ will lead to an increase in unleaded petrol excise duty in 9 Member States, from 2016 (C1) and 2014 (C2+). Since it does not include a fluctuation band and thus no maximum level, option C2+ should have no influence on non-commercial gas oil excise duty. All three options will allow reductions in distortions of competition. All things being equal, since the minimum level of taxation for commercial gas oil increases more under C1 than under C2 in the long run, C1 will allow reductions in differences to occur to a greater extent than under C2. In C2+, the amount of the reduction would depend on the reaction of the currently high-taxing Member States. In case they decide to reduce their rate and introduce road charges, the reduction in taxation differences will also be greater than that obtained under C2, thanks to the higher minimum level. Administrative costs will be of the same order as in option B and do not seem to be an issue that preoccupies the industry. The impact on the car industry, measured in terms of unleaded petrol and gas oil vehicles stock, appear to be very small under all options. None of the options should have a significant impact on transport demand or on modal shift. They could all have small positive social effects, in terms of reduction in congestion, accidents and working hours of drivers, but to a lesser extent than under option B, which remains the option most likely to reduce detours to the greatest possible extent. In terms of employment, all these options could lead to some shift at regional/national level, but no change should be observed at European level, all other things being equal.

The biggest differences between these three options concern fuel consumption, the environmental impact, impact on fuel tourism and the budgetary impact. Whereas options C1 and C2 lead to small increases in gas oil consumption and decreases in consumption of unleaded petrol (given the upper limit to gas oil taxation), C2+ is the only option that enables both gas oil and unleaded petrol consumption to be reduced. From an environmental point of view, C2+ contributes more to the internalisation of externalities than C2, since its minimum levels are higher. Without taking fuel tourism into account, C2+ is the only option that reduces pollutants in the air. Fuel tourism and the related pollutant emissions will be reduced in all three options (to the greatest extent in option C1 with 0.6 million tons emissions). In option C2+, fuel tourism could be reduced to a lower level than under C1 in the event that Germany and the United Kingdom (Member States presenting the highest gas oil taxation levels at the moment) decide to lower their commercial rate through the introduction of road user charges. From a budgetary point of view, the total budgetary impact (e.g. taking into account the reductions of fuel tourism) will be respectively -€ 38,3 billion (C1), -€ 46,8 billion (C2) and +€ 40,3 billion (C2+).

For all the above mentioned reasons, the Commission has decided to propose option C2+.