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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 24.7.2007
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Proposal for a

COUNCIL DECISION

authorising France to apply a reduced rate of taxation to unleaded petrol used as motor fuel and consumed in the Corsican departments in accordance with Article 19 of Directive 2003/96/EC

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

- **Reasons for and objectives of the proposal**

The taxation of energy products and electricity in the Community is governed by Council Directive 2003/96/EC¹. The Directive specifies which products are taxable, the uses that make them taxable and the minimum rates at which they must be taxed depending on whether they are used as motor fuel, for certain industrial or commercial purposes or for heating.

Pursuant to Article 19(1) of Council Directive 2003/96/EC, the Council, acting unanimously on a proposal from the Commission, may authorise any Member State to introduce further exemptions from or reductions in the rate of excise duties for specific policy considerations.

The objective of this proposal is to permit France to apply a reduction in the rate of taxation on unleaded petrol used as motor fuel and consumed in the Corsican departments with a view to partially offsetting the additional costs induced by geographical remoteness and difficulties of supply.

- **Background**

By letter dated 16 October 2006, the French authorities requested authorisation to apply a reduced rate of energy tax to unleaded petrol used as fuel by way of extension of a practice followed under the derogation provided for in Article 18(1) of Directive 2003/96/EC, read in conjunction with the third indent of point 6 of Annex II to that Directive, and this before the Directive expired. The above provision authorised France to apply until 31 December 2006 a reduced rate of taxation in respect of consumption in Corsica, provided that the reduced rates at all times respect the minimum rates of duty on energy products as provided for under Community law. The authorisation requested is for EUR 1 per hectolitre for the period from 1 January 2007 to 31 December 2012. The French authorities sent additional information on 13 February and 3 May 2007.

In justification of its request for authorisation under Article 19 of Council Directive 2003/96/EC, France points to Corsica's island status. This feature gives rise to additional costs for delivering and storing motor fuels on the island - a handicap which the tax reduction requested is designed to partially offset.

Corsica is mountainous: only 10% of the island has a gradient of less than 12% and, away from the eastern plain, flat terrain is almost non-existent. Internal communications are especially difficult as hardly any of the valleys interconnect. Corsica is therefore compartmentalised, being divided into numerous micro-regions.

As a result, whereas it costs EUR 8,05 per hectolitre to transport and distribute 95 octane unleaded petrol in mainland France, it costs EUR 17,34 in Corsica. Transporting petroleum

¹ OJ L 238, 31.10.2003, p. 51.

products by sea and storing them on the island results in a marked increase in the cost of motor fuel production. The island's two fuel storage depots process 400 000 m³ a year, whereas, given their size, the break even point is around 1 million cubic metres for each depot. Despite that, both depots are necessary in view of the island's geography and the need to store fuel in order to avoid any interruption in supply. The annual average price of unleaded petrol consumed in mainland France in February 2007 thus came to EUR 116,96 per hectolitre, including tax. In Corsica, to this amount must be added EUR 3-6 per hectolitre, including tax, which, without the EUR 1/hl tax reduction, is tantamount to a difference of EUR 4-7/hl².

The tax differentiation thus helps to ensure territorial continuity with the mainland by reducing the cost of unleaded petrol by EUR 1/hl, this amount being less than the additional cost borne.

The annual budgetary expenditure related to the tax reduction comes to EUR 890 000. The island's population, as on 1 January 2007, may be estimated at 279 000, to which must be added a seasonal population, both of which consume in Corsica unleaded petrol qualifying for the excise duty reduction.

- **Provisions in force in the field covered by the proposal**

Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity.

Council Decision 2005/767/EC of 24 October 2005 authorising France to apply differentiated levels of taxation to motor fuels in accordance with Article 19 of Directive 2003/96/EC³. The regionalisation of the rates of domestic consumption tax on petroleum products (TIPP) concerns both diesel and unleaded petrol used as motor fuel. It forms part of the policy of decentralisation planned by the French authorities inasmuch as it allows the French regions, including Corsica, to adjust up or down the rates of excise duty applicable to motor fuels. This decentralisation is part of an approach designed to increase administrative effectiveness by improving the quality and reducing the cost of public services. It is also part of a policy of subsidiarity, allowing for decisions to be adopted in many areas at the appropriate level (see the second recital to Decision 2005/767/EC) and therefore pursues objectives other than those sought by the tax reduction requested.

- **Coherence with other policies and objectives of the Union**

Pursuant to Article 19(1) of Council Directive 2003/96/EC, the Council, acting unanimously on a proposal from the Commission, may authorise any Member State to introduce further exemptions or reductions in excise duties for specific policy considerations. When the Commission examines a request, it takes into account the proper functioning of the internal market, the need to ensure fair competition and the implementation of the Community's health, environment, energy and transport policies.

² The difference in cost outlined above is not passed on fully at the pump, the VAT rate being lower in Corsica than on the mainland.

³ OJ L 290, 4.11.2005, p. 25.

The tax differentiation places unleaded petrol consumers in Corsica on a more equal footing with similar consumers on the mainland by partially offsetting the additional cost borne by consumers in Corsica. The proposed measure therefore meets certain regional and cohesion policy objectives.

The tax reduction does not go beyond the additional costs of transport and distribution borne by consumers in Corsica. The EUR 1/hl reduction in the cost of unleaded petrol is much smaller than both the additional cost borne and the difference between the respective final prices.

The reduced rate of taxation on the consumption of unleaded petrol in Corsica (EUR 57,92/hl) is still appreciably higher than the minimum Community level set by Directive 2003/96/EC (EUR 35,90/hl). This holds true even allowing for the regionalisation of the TIPP authorised by the Council Decision of 24 October 2005⁴. In this context, the Corsican regional authorities are authorised to adjust the rate of TIPP as it results from the provisions of Table B in Article 265 of the French Customs Code. Such adjustment may not exceed EUR 1,77/hl, the maximum the regions are allowed. Thus, by combining the tax reduction requested with the maximum reduction possible under the decision taken by Corsica to regionalise the TIPP, the reduced rate of taxation on the consumption of unleaded petrol in Corsica would be EUR 56,15/hl, which would still be appreciably higher than the minimum Community level set by Directive 2003/96/EC (EUR 35,90/hl).

The Commission is therefore of the opinion that the reduction is compatible with the incentive effect of the tax with a view to improving energy efficiency.

Lastly, the measure is acceptable from the point of view of the proper functioning of the internal market and of the need to ensure fair competition. It merely seeks to partially offset the additional costs associated with Corsica's island status. In view of the remote and insular nature of the departments to which it applies and the moderateness of the reduction in the rate - which is, moreover, very high compared with the Community minimum - the measure will not give rise to any movement specifically linked to the supplying of fuel.

Article 19(2) of Directive 2003/96/EC lays down, for this type of measure, a maximum period of six years, with the possibility of renewal. It is appropriate at this stage to grant the authorisation for six years, i.e. from 1 January 2007 until 31 December 2012.

Steps should be taken to ensure that, in the context of the derogation provided for in Article 18 of the Directive, read in conjunction with Annex II to the Directive, France can apply the specific reduction to which this proposal for a Decision relates seamlessly following on from the situation obtaining under the law applicable before 1 January 2007. The authorisation requested should therefore be granted with effect from 1 January 2007.

⁴ The reduction which this proposal seeks to authorise would apply automatically without the need for a specific decision by the Corsican regional authorities, whereas differentiation in the context of Decision 2005/767/EC would call for such a decision.

2. CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

- **Consultation of interested parties**

The proposal consists in an exemption authorisation which concerns only France.

- **Obtaining and using expertise**

It has not been necessary to call in outside expertise.

- **Impact assessment**

Not applicable.

3. LEGAL ELEMENTS OF THE PROPOSAL

- **Summary of the measures proposed**

The Commission proposes to authorise the tax reduction of EUR 1 per hectolitre until 31 December 2012, thereby permitting France to apply a reduced rate of taxation to unleaded petrol used as motor fuel and consumed in the Corsican departments.

- **Legal basis**

Article 19 of Council Directive 2003/96/EC.

- **Principle of subsidiarity**

The field of indirect taxation covered by Article 93 EC is not in itself within the exclusive competence of the Community within the meaning of Article 5 EC.

However, the exercise by Member States of their concurrent competences in this field is strictly circumscribed and limited by the measures harmonising national laws already adopted by the Council.

As it happens, pursuant to Article 19 of Directive 2003/96/EC, only the Council is empowered to authorise a Member State to introduce further exemptions or reductions within the meaning of that provision. Member States cannot substitute themselves for the Council.

The proposal therefore respects the principle of subsidiarity.

- **Principle of proportionality**

The proposal respects the principle of proportionality. The EUR 1/hl reduction in the cost of unleaded petrol is well below the additional cost borne (EUR 4-7/hl).

- **Choice of instruments**

Instrument(s) proposed: Council decision.

Article 19 of Directive 2003/96 makes provision for this type of measure only.

4. BUDGETARY IMPACT

The measure does not impose any financial and administrative burden on the Community. The proposal therefore has no impact on the Community budget.

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authorising France to apply a reduced rate of taxation to unleaded petrol used as motor fuel and consumed in the Corsican departments in accordance with Article 19 of Directive 2003/96/EC

(Only the French text is authentic)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity⁵, and in particular Article 19(1) thereof,

Having regard to the proposal from the Commission,

Whereas:

- (1) Pursuant to Article 18(1) of Directive 2003/96/EC, read in conjunction with Annex II to that Directive, France was authorised to apply a reduced rate of taxation in respect of consumption in Corsica. The authorisation was granted until 31 December 2006.
- (2) By letter dated 16 October 2006, the French authorities requested authorisation to apply a reduced rate of energy tax to unleaded petrol used as motor fuel by way of extension of a practice followed under the above-mentioned derogation, and this before the derogation expired. The reduction amounts to EUR 1 per hectolitre. The authorisation is being requested for the period from 1 January 2007 to 31 December 2012. In Corsica the cost of supplying unleaded petrol to the forecourt is appreciably higher than in mainland France, final prices being EUR 4-7/hl higher than on the mainland.
- (3) By reducing the tax on unleaded petrol borne by consumers in Corsica, the consumers in question will be placed on a more equal footing with those on the mainland. The measure therefore meets regional and cohesion policy objectives.
- (4) The tax reduction is no larger than what is necessary to allow for the additional transport and distribution costs borne by consumers in Corsica.

⁵ OJ L 283, 31.10.2003, p. 51. Directive as last amended by Directive 2004/75/EC (OJ L 157, 30.4.2004, p. 100).

- (5) The final level of taxation complies with the minimum rates laid down in Directive 2003/96/EC - currently EUR 359/1 000 l (or EUR 35,90/hl). This holds true even allowing for the authorisation conferred by Council Decision 2005/767/EC of 24 October 2005⁶, the effects of which may be combined with those of the present Decision.
- (6) In view of the remote and insular nature of the departments to which it applies and the moderateness of the reduction in the rate - which is, moreover, very high compared with the Community minimum - the measure requested will not give rise to any movement specifically linked to the supplying of fuel.
- (7) Consequently, the measure is acceptable from the point of view of the proper functioning of the internal market and of the need to ensure fair competition and it is not incompatible with the Community's health, environment, energy and transport policies.
- (8) France should therefore be authorised, pursuant to Article 19(2) of Directive 2003/96/EC, to apply a reduced rate of taxation to unleaded petrol used as motor fuel and consumed in Corsica, and this until 31 December 2012.
- (9) It should be ensured that, in the context of the derogation provided for in Article 18 of Directive 2003/96/EC, read in conjunction with Annex II to that Directive, France can apply the specific reduction to which this Decision relates seamlessly following on from the situation obtaining under the law applicable before 1 January 2007. The authorisation requested should therefore be granted with effect from 1 January 2007,

HAS ADOPTED THIS DECISION:

Article 1

France is hereby authorised to apply a reduced rate of taxation to unleaded petrol used as motor fuel and consumed in the Corsican departments.

In order to avoid any over-compensation, the reduction must not go beyond the additional costs of transport, storage and distribution compared with mainland France.

The reduced rate must comply with the obligations in Directive 2003/96/EC, in particular the minimum rates referred to in Article 7.

⁶ OJ L 290, 4.11.2005, p. 25.

Article 2

This Decision shall be applicable from 1 January 2007 and shall expire on 31 December 2012.

Article 3

This Decision is addressed to the French Republic.

Done at Brussels,

*For the Council
The President*