

Proposal for a Council Decision authorising Luxembourg to apply a differentiated rate of excise duty to low-sulphur diesel in accordance with Article 8(4) of Directive 92/81/EEC

(2002/C 262 E/06)

COM(2002) 113 final

(Submitted by the Commission on 7 March 2002)

EXPLANATORY MEMORANDUM

1. Submission of request

In a letter dated 3 December 2001 Luxembourg informed the Commission that it wanted to introduce a differentiated rate of excise duty on diesel fuel with a sulphur content not exceeding 50 particles per million (ppm) under Article 8(4) of Council Directive 92/81/EEC on the harmonisation of the structures of excise duties on mineral oils ⁽¹⁾.

The term 'low-sulphur diesel' refers to diesel with a sulphur content meeting the 50 ppm environmental criterion laid down in Directive 98/70/EC of the European Parliament and of the Council of 13 October 1998 relating to the quality of petrol and diesel fuels ⁽²⁾.

Luxembourg explains that the purpose of the proposed lower rate of excise duty is to encourage the use of this environmentally-friendly fuel.

Excise duty would be increased by EUR 15 per 1 000 litres for diesel fuel with a sulphur content exceeding 50 ppm. Thus the EUR 246,65/1 000 litre rate currently charged on all diesel fuel would apply only to low-sulphur diesel, and a new rate of EUR 261,65 would be introduced for the higher-sulphur category. The pump price of diesel with a sulphur content in excess of 50 ppm would increase by LUF 0,7/litre (EUR 0,02/litre) so the new differentiated rate should lead to its rapid disappearance from the market.

Luxembourg has asked for this measure to enter into force on 1 January 2002 and expire on 1 January 2004.

Luxembourg does not consider this measure to constitute State aid, since it applies to all consumers, regardless of economic sector.

2. The Commission's assessment

Under Article 8(4) of Council Directive 92/81/EEC on the harmonisation of the structures of excise duties on mineral oils, the Council, acting unanimously on a proposal from the Commission, may authorise any Member State to introduce exemptions from, or reductions in, excise duties on grounds of specific policy considerations.

By letter dated 3 December 2001, Luxembourg requested authorisation to apply a differentiated rate of excise duty to low-sulphur (50 ppm) diesel from 1 January 2002.

In accordance with Directive 92/81/EEC, the other Member States have been informed of this request.

The differentiation will be achieved by means of a EUR 15/1 000 litre increase in excise duty for diesel with a sulphur content exceeding 50 ppm. The existing EUR 246,65/1 000 litre rate for diesel will then apply only to low-sulphur fuel, while a new rate of EUR 261,65 will be brought in for diesel whose sulphur content exceeds 50 ppm.

⁽¹⁾ OJ L 316, 31.10.1992, p. 12, as last amended by Directive 94/74/EC (OJ L 365, 31.12.1994, p. 46).

⁽²⁾ OJ L 350, 28.12.1998, p. 58, amending Council Directive 93/12/EEC (OJ L 74, 27.3.1993, p. 81).

The differentiated rates of excise duties will thus comply with the minimum Community rates laid down in Article 5 of Directive 92/82/CEE ⁽¹⁾.

Following a thorough study of the measure and acknowledging the importance of tax incentives to promote cleaner fuels, the Commission notes that the lower rate of excise will be of general application, in other words available to anyone filling up with low-sulphur diesel in Luxembourg. The availability of sufficient quantities of this fuel, of a satisfactory quality, has been verified.

The derogation is sought on environmental grounds — the benefits in terms of air quality are known.

The measure is for a fixed period. It expires on 31 December 2003, and use of this type of fuel becomes mandatory on 1 January 2005 under Directive 98/70/EC of the European Parliament and of the Council of 13 October 1998 relating to the quality of petrol and diesel fuels. However, the logic of the system envisaged in Article 8(4) of Directive 92/81/EC dictates that requests should refer to derogations which will enter into force only after being approved by the Council, without prejudice to other rules of Community law. Accordingly the Commission intends to propose that the measure enter into force on a date that allows the Council time to adopt the proposed authorisation decision, namely 1 April 2002.

The Commission notes that the Council has authorised differentiation of excise duty for low-sulphur diesel in the Netherlands ⁽²⁾ and Ireland ⁽³⁾. Similar derogations for low-sulphur fuels (petrol and diesel) have also been approved for Germany ⁽⁴⁾ and Belgium ⁽⁵⁾.

3. Decision

In accordance with Article 8(4) of Council Directive 92/81/EEC, the Commission proposes that the Council authorise Luxembourg to apply a differentiated rate of excise duty of a maximum of EUR 15 per 1 000 litres to low-sulphur (50 ppm) diesel used as fuel from 1 April 2002 until 31 December 2003.

⁽¹⁾ OJ L 316, 31.10.1992, p. 19, as last amended by Directive 94/74/EC (OJ L 365, 31.12.1994, p. 46).

⁽²⁾ Council Decision 2001/229/EC, 12.3.2001 (OJ L 84, 23.3.2001).

⁽³⁾ Council Decision 2002/23/EC, 4.12.2001 (OJ L 11, 15.1.2002).

⁽⁴⁾ Decision 2000/283/EC of 10.4.2000 authorises Germany to apply a differentiated rate of excise duty from 1 November 2001 to 31 December 2002 on fuels with a maximum sulphur content of 50 ppm on condition that it complies with the requirements laid down in Council Directive 92/82/EEC of 19 October 1992 on the approximation of the rates of excise duties on mineral oils, and in particular the minimum rates laid down in Articles 4 and 5 thereof.

⁽⁵⁾ Council Decision 2001/439/EC, 5.6.2001 (OJ L 155, 12.6.2001).

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 92/81/EEC of 19 October 1992 on the harmonisation of the structures of excise duties on mineral oils ⁽¹⁾, and in particular Article 8(4) thereof,

Having regard to the proposal from the Commission,

Whereas:

(1) Luxembourg has requested authorisation to apply a differentiated rate of excise duty to low-sulphur (50 ppm) diesel used as fuel.

(2) The other Member States have been informed of Luxembourg's request.

(3) The differentiation of excise duty will take the form of a EUR 15/1 000 litre increase in excise duty on diesel fuel with a sulphur content exceeding 50 ppm. The effective rates will remain above the minimum Community rates of excise duty laid down in Council Directive 92/82/EEC of 19 October 1992 on the harmonisation of the structures of excise duties on mineral oils ⁽²⁾.

(4) The derogation is sought on environmental grounds — the benefits in terms of air quality are known.

⁽¹⁾ OJ L 316, 31.10.1992, p. 12, as last amended by Directive 94/74/EC (OJ L 365, 31.12.1994, p. 46).

⁽²⁾ OJ L 316, 31.10.1992, p. 19, as last amended by Directive 94/74/EC (OJ L 365, 31.12.1994, p. 46).

(5) Low-sulphur diesel complies with the environmental criterion (50 ppm) laid down in Directive 98/70/EC of the European Parliament and of the Council of 13 October 1998 relating to the quality of petrol and diesel fuels and amending Council Directive 93/12/EEC⁽¹⁾. Under Article 4 of that Directive, the use of 50 ppm diesel will normally be compulsory from 1 January 2005. The Luxembourg measure will expire on 31 December 2003.

(6) On the information available at present, neither the Commission nor the Member States consider that the application of a differentiated rate of excise duty on low-sulphur diesel will cause distortions of competition affecting the common interest or hinder the operation of the single market.

(7) The Commission regularly reviews reductions and exemptions to check that they do not distort competition or the operation of the internal market and are not incompatible with Community environmental policy,

HAS ADOPTED THIS DECISION:

Article 1

Luxembourg is authorised to apply a differentiated rate of excise duty to low-sulphur (50 ppm) diesel from 1 April 2002 to 31 December 2003.

Article 2

The differentiation in excise duty referred to in Article 1 must not exceed EUR 15 per 1 000 litres of fuel.

The rate of excise duty on diesel used as fuel must comply with the terms of Council Directive 92/82/EEC, and in particular the minimum rates laid down in Article 5 thereof.

Article 3

This authorisation shall expire on 31 December 2003.

Article 4

This Decision is addressed to Luxembourg.

⁽¹⁾ OJ L 350, 28.12.1998, p. 58, amended by Commission Directive 2000/71/EC (OJ L 287, 14.11.2000, p. 46).