Opinion of the European Economic and Social Committee on 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’


(2008/C 44/25)

On 19 April 2007 the Council of the European Union decided to consult the European Economic and Social Committee, under Article 93 of the Treaty establishing the European Community, on the abovementioned proposal.

The Section for Economic and Monetary Union and Economic and Social Cohesion, which was responsible for preparing the Committee’s work on the subject, adopted its opinion on 8 October 2007. The rapporteur was Mr Burani.

At its 439th plenary session, on 24 October 2007, the European Economic and Social Committee adopted the following opinion by 151 votes to none with four abstentions.

1. Gist of the proposal for a directive

1.1 This proposal amends Directive 2003/96/EC (1) (the ETD) on tax arrangements for gas oil used as motor fuel, applicable in all countries of the European Union. In practice, it introduces a gradual increase in minimum excise duties for gas oil in order to align them (the term used in the directive is ‘coordination’) with taxation on petrol: EUR 380 per 1 000 litres for both types of fuel as from 1 January 2014. The deadline has been extended for Member States not benefiting from transition periods.

1.2 A number of distinctions, derogations and temporal and regulatory adjustments have been made within this general framework. A first distinction is made between ‘commercial gas oil’ (used by trucks of over 7.5 tonnes and coaches) (2) and ‘non-commercial gas oil’ (which, in the absence of further details, may be presumed to refer to gas oil used for all other types of vehicle). Member States are authorised to apply a lower tax rate for commercial gas oil, provided that they comply with the minimum Community levels set out in the directive, and that the excise duty is not below the national level in force on 1 January 2003. Under no circumstance may the tax on non-commercial gas oil and petrol be lower than the tax on commercial gas oil.

1.3 Taxation for commercial gas oil may however be below the national level in force on 1 January 2003, provided that the Member State wishing to apply this measure introduces, or has already introduced, a system of road user charges. Nevertheless, this is only permitted in cases where the combination of the reduced rate and the road user charges is broadly equivalent to — but not below — the national level in force on 1 January 2003.

1.4 Another option for allowing a lower tax on commercial gas oil is to apply separate levels of taxation for commercial gas oil by introducing (or retaining) a non-discriminatory refund mechanism that enables all operators who have used gas oil in that Member State to have access to refunding under conditions which are equal, transparent and simple.

1.5 The harmonisation ‘roadmap’ for the taxation of petrol and gas oil provides for:

— in the case of petrol, a tax of EUR 359 per 1 000 litres from 1 January 2004, and of EUR 380 from 1 January 2014;

— in the case of gas oil, a graduated increase in tax: EUR 302 from 1 January 2004, EUR 330 from 1 January 2010, EUR 359 from 1 January 2012 and finally EUR 380 from 1 January 2014.

1.6 However, there are several derogations. These can be summed up as follows:

— the transition period ends in 2016 for countries already benefiting from derogations up to 2012 (SP, AT, BE, LU, PT, EL, PL); they may apply duties of:

— the transition period ends in 2017 for countries enjoying derogations up to 2013 (LV and LT), with other arrangements for BG and RO.

2. General comments

2.1 One of the aims of the proposal is to reduce the distortions of competition on the market resulting from differences in the pump price of fuel, and commercial gas oil in particular, in the Member States. These differences are often considerable. On 18 May 2007, a litre of gas oil cost EUR 0.82 in Latvia; EUR 1.41 in the United Kingdom; EUR 1.12 in Germany; EUR 0.90 in Luxembourg; EUR 1.18 in Italy; and EUR 0.98 in Austria. Seen from the perspective of tax harmonisation, the Commission’s proposal would therefore appear to be justified.

2.2 The precise reason for the Commission’s decision to present the proposal cannot be fully appreciated without comparing the proposal with the directive it seeks to amend, i.e. Directive 2003/96/EC of 27 October 2003 (Energy Tax Directive or ETD). Emphasis is placed on commercial gas oil (1) because it is believed to impact on the cost of haulage. The Commission therefore considers non-commercial gas oil and petrol to be less important even though distortions at borders are sometimes quite significant.

2.2.1 The action taken with regard to commercial gas oil is in line with the transport policy white paper, but, according to the Commission, will also contribute indirectly to reducing the differences between non-commercial gas oil and petrol, by aligning the minimum levels of taxation.

2.3 The ETD permits Member States to decouple the prices of commercial and non-commercial gas oil by means of a refund mechanism. This has undoubtedly advantages for road hauliers from countries with high levels of taxation, but is a cumbersome procedure from an administrative point of view and expensive both for the tax authorities and for firms. Moreover, the procedures involved in accessing this facility have caused more problems than they have solved. Existing provisions regarding road user charges (retained in the proposal) are supplemented by an additional requirement according to which the national level of taxation in force for gas oil on 1 January 2003 has to be at least twice as high as the minimum level of taxation applicable on 1 January 2004. In practice, very few countries (including the United Kingdom) meet this requirement. The only possible solution for other countries was (and remains) to increase the rate applied to non-commercial gas oil. This option is obviously unpopular. Ultimately, the differences have not been reduced and high-taxing countries have had no way of reducing differences vis-à-vis other countries. The current proposal simplifies this process, and makes it accessible to a greater number of Member States. However, the concept remains essentially unchanged.

2.4 In this context, the EESC notes that alongside excise duties, all Member States have several other taxes and duties, which raise the total tax rate to 85 % — and above, in some cases — of the pump price. Excise duty represents between 30 and 60 % of the price of fuel. The difference can be attributed to VAT and other duties (usually local) which the Commission cannot influence. Ultimately, even after the harmonisation to be achieved in 2016, a number of non-harmonised duties will remain. Furthermore, the industrial price of gas oil is lower than the industrial price of petrol. As a result, unless speculation enters the equation — something that bears monitoring — the pump prices of petrol and gas oil will continue to vary, and the differences between countries will remain, albeit (possibly) to a lesser extent than at present. Neither the ETD nor the present proposal will contribute appreciably towards creating a level playing field for competition.

2.5 As a result, the proposal’s scope with regard to competition is fairly limited, always bearing in mind that the Commission has no authority to impact on other fuel-price components. Nevertheless, even in this light, the proposal seems incomplete. It would be appropriate to consider adopting a maximum excise rate as well. This measure would make it possible over time to discourage the shifting of consumption from one country to another. The EESC has supported this approach in the past, and more recently in its opinion on the approximation of the rates of excise duty on alcohol (2) — a subject whose treatment bears a number of similarities to the present proposal.

2.5.1 Basing itself on the studies available to it, the Commission has discarded this solution on the grounds that imposing a ceiling would indeed limit the Member States’ fiscal sovereignty. The EESC would argue that, applying that reasoning, even the obligation to impose minimum levels could be viewed as a violation of sovereignty.

2.6 Despite these limitations, the Commission’s proposal represents a step towards harmonisation, if viewed purely in terms of taxation and creating a level playing field for competition. From this angle, the Commission is merely fulfilling a requirement of the Lisbon strategy. As a side effect, an increase in gas oil excise duties could assist in combating the well-known practice of ‘fuel tourism’, i.e. buying fuel in the countries with the lowest prices. The most common example is Luxembourg but it is common practice in all border areas with significant price differentials. Nevertheless, Luxembourg remains the most obvious example since its annual gas oil consumption in 2004 amounted to 4 500 litres per capita, compared with 750 in neighbouring Belgium (3). The EESC certainly agrees that the reasoning behind these considerations is sound, but would point out that the comparison of per capita consumption figures is based on a significant difference in the number of inhabitants: 10.5 million in Belgium and 460 thousand in Luxembourg.

(1) The term ‘commercial gas oil’ refers to gas oil used for road haulage, and in particular to trucks of over 7.5 tonnes.

(2) Source: Eurostat, IEA.

(3) OJ C 175, 27.7.2007 on the ‘Approximation of the rates of excise duty on alcohol’. 

2.7 Basing itself on this fact, and backed by research, the Commission argues that many hauliers make detours in order to fill up at the cheaper service stations. The additional distance driven (millions of kilometres) produces an increase in fuel consumption and a corresponding increase in pollution. Eliminating incentives to resort to fuel tourism would eliminate detours and result in a corresponding reduction in pollution. This is an appealing and undoubtedly popular theory, but it is not entirely in line with reality, at least in the case of the example cited. A mere glance at a map will reveal that Luxembourg is an unavoidable transit country for a substantial proportion of North-South and East-West traffic (in northern Europe). Those who might intend to make a detour in order to fill up more cheaply must bear in mind that in addition to the time wasted, the fuel used and any toll charges they may have to pay over the additional distance, they will have to face hours queuing at the service station (6) and heavy traffic, especially at certain times of the day. Nevertheless, scenarios similar to the ones envisaged by the Commission may exist, especially in Member States on the EU’s borders.

2.8 Generally speaking, the reduction in ‘fuel tourism’ seems to have been over-estimated. Time is of key importance when calculating transport costs. Economies on fuel costs must be weighed against higher wage costs and late deliveries. A forty-five minute delay vis-à-vis forecast arrival time often means missing the scheduled loading or unloading date, and hence adding an overnight stay. Although fuel tourism by trucks in transit on pre-established routes is a significant factor, the EESC believes that detours justified by savings on the price of filling up, have been somewhat over-estimated, at least in the case of trucks. Different conclusions might emerge from an analysis of all traffic resulting from fuel tourism. However, this would raise other considerations, as will be demonstrated below.

2.8.1 The EESC would like to draw the decision makers’ attention to the fact that the possible overall reduction in pollution caused by the decreased incentives to fuel tourism may have been significantly over-estimated.

3. Comments on the proposal’s relevance

3.1 The EESC can only welcome the proposal to harmonise excise duties, if it is viewed as a fiscal measure designed to establish a level playing field for competition; it falls within the Commission’s remit and is consistent with the Lisbon strategy. The Committee must, however, express reservations on various related issues, some of which cast considerable doubt on the wisdom of adopting the proposed measures.

3.2 The Commission states that the differences in gas oil prices applied by different EU countries create distortions of competition on haulage markets, pointing out that fuel represents on average between 20 and 30 % of the running costs of a business. According to a French Transport Ministry study quoted by the Commission, ‘two thirds of the variations observed between 1997 and 2001 can be attributed to three factors: tax differences on gas oil, differences in corporate tax and the evolution of salaries between two given countries. Tax differences for gas oil appear to be the main factor explaining by itself 40 % of the market share variations observed’ (7).

3.2.1 While the data and the econometric studies consulted by the Commission are not in question, it should nevertheless be noted that the considerable cost divergence between the various countries (and particularly with the newest Member States) means that the relative impact of fuel costs as a factor in those differences is shrinking. Essentially the accession of the new countries may have increased the variations, but the relative value of the fuel factor has fallen. In such circumstances, the directive’s ability to create more uniform conditions for competition would fail to meet expectations. The Commission does not share this view, believing that fuel costs have come to play an important role in competition distortion between old and new Member States. The EESC notes that, if this is the case, serious thought is needed regarding the wisdom of increasing the costs for growing economies.

3.2.2 Even if it were possible to attain a levelling out of fuel costs, which is not the case owing to additional duties that differ from one country to another (see point 2.4), non-fuel haulage costs are many and substantial and none of them could be harmonised, in the near future at least. In addition to the three elements mentioned in the French study, there is the cost of vehicles (with differences of up to 20 %), road taxes, insurance, the price of buildings and equipment, and others. In view of all these differences, the contribution that harmonising excise duties on gas oil can make to reducing disparities in competition becomes somewhat modest.

3.2.3 The proposal’s explanatory memorandum does not mention the impact that an increase in fuel costs would have on public and private passenger transport businesses and on tourism in general. The econometric research quoted in the accompanying document (SEC(2007)170/2, pp. 24 and 26) would suggest that while commercial transport may not feel the increase in fuel costs in quantitative terms, private transport would reduce slightly in volume (less than 1 % over 23 years), with a corresponding reduction in pollution. The Commission has carried out serious econometric studies which estimate that fuel costs would increase by 0,10 % to 1,1 % over time, and that this would be absorbed by the inflation rate. This is a soothing theory, but does not take into account the difference between the real and perceived inflation rate. Moreover, a well-known multiplier effect on the market means that increases in costs, however slight, will cause disproportionate price increases. Fuel prices are at the base of the price pyramid. An

(6) There are only four service stations on Luxembourg’s motorways, two for each direction.

increase in oil taxes will affect the prices of all commodities and services resulting in higher community inflation rates, as well as in a decrease of mobility, loss of jobs and decrease in turnover.

3.2.3.1 With respect to taxation, the Commission notes that energy taxation in general (and excise duties in the specific case of fuels) has fallen due to inflation since the turn of the century, both as a percentage of GDP and compared with total tax revenue. The proposal to increase excise duties would therefore simply amount to an adjustment of tax revenue to take into account the presumed rate of inflation (at a rate of 2.2%) from now until 2017. This makes perfect sense from a tax point of view, but for road hauliers and the general public it would represent an increase in fuel costs additional to the overall cost of inflation.

3.2.4 The refund mechanism, which according to the Commission is not intended to benefit hauliers as such, but rather to create a level playing field for competition, is a solution that some Member States have already adopted, but, as previously stated, it is cumbersome for firms as well as for the tax authorities themselves. Even setting aside its earlier criticisms, the EESC wonders whether the proposed solution is consistent with the simplification of administrative procedures cited by the Council as a factor for growth.

3.2.5 Further doubts are raised by the measure underpinning the refund mechanism, whereby taxation may be below the specified level (see point 2.3) if the Member State introduces, or has already introduced, road user charges for heavy vehicles (or in more explicit terms: tolls or tax discs). Both approaches would result in a clear loss for the tax authorities: tolls and tax discs are to the advantage of motorway operators or other government budget headings. In short, the moderating effect would not benefit the hauliers (tolls will balance out the lower increases in taxation) or the tax authorities. Worse still, the introduction of or increase in tolls would affect all other road users unless separate levels of taxation or special tax discs were introduced, which would create administrative complications that would be even more of a burden on transit vehicles from other Member States.

3.2.6 Extremely complicated procedures to administrate taxes are generating corruption and fraud. They are breaking the basic principle of the market economy imposing two prices for the same product.

3.3 The EESC wishes to make a more general point of some importance. The proposed measures are to be phased in over a seven-year period, and in some Member States, over a ten-year period. There is no sign of improvement in the international situation regarding the price, quantity and supply of crude oil. Under these circumstances, a programmed increase in fuel costs seems ill-advised and could have a negative impact on transport costs within the European Union. Nor would it bring real benefits in terms of the fight against pollution given that, according to the Commission itself, fuel consumption is not set to decrease (the subject of detours from set routes has already been discussed when considering fuel tourism).

3.4 Precisely because we are referring to the future, one important aspect to bear in mind is the growing introduction of alternative fuels, which are being generally promoted as viable alternatives to conventional fuels from an environmental perspective and as a means of reducing Europe's dependence on external energy sources. An increase in conventional fuel prices might encourage research into and the production of alternative fuels, but only if the uniform fiscal policy to be adopted is already known. The various countries do not currently take a uniform approach, although there is a general consensus on the need to encourage this type of production. In other words, the Commission and governments should go beyond general words of encouragement and make it clear whether they intend to adopt uniform fiscal and non-fiscal policies on biofuels and whether they would then treat them as useful ‘competitors’ with traditional fuels, or whether alternative fuels will be treated in the same way as other fuels and taxed in the same way. The automotive industry and the market should not be left with uncertainty.

3.4.1 Liquid gas, nowadays used mainly for private vehicles and public transport, but which in future could be used commercially following technological innovations, is yet another matter. These fuels enjoy a favourable tax regime in certain countries. At present, their consumption is marginal. However, as in the case of biofuels, the market may develop and, at any event, cannot be left in the dark. Electric traction is even more marginal: even if its use seems unlikely to expand beyond certain strict limits, it would still be advisable for the Commission to analyse what fiscal policy to adopt for all alternative fuels.

3.5 Finally, the picture would not be complete if it did not include globalisation. Irrespective of considerations relating to internal competition, the European Union should focus more attention on its competitiveness vis-à-vis the most industrialised and emerging countries. As previously stated, the average pump price of fuel in the EU is much higher than in most other countries. A measure designed to reduce — with uncertain consequences — internal competition, but which would result in an overall increase in costs, would defeat the more important objective of improving our already precarious competitive position.

3.5.1 The increase in the taxation level of gas oil in the future period has its positive and negative sides and effects. But if we look at the balance, negative effects definitely prevail. The increase in the levels of taxes on gas oil will result in losing competitiveness and jobs. In the long-run the draft proposal will reduce and threaten EU economic potential and will pose an obstacle to the achievement of cohesion — one of the main objectives of the EU — because of the decreased mobility of people.
4. Conclusions

4.1 The draft directive is in line with EU policies on equal conditions for competition, and as such cannot be opposed. It should be borne in mind however that this solution does not deliver fundamental value, inasmuch as the difference in haulage companies’ costs in the various countries will remain substantial owing to differences in other charges over which the Commission has no power.

4.2 The Commission focuses closely on the fight against pollution as a collateral but important effect of reducing the ‘fuel tourism’ phenomenon. The EESC considers that this effect has been largely over-estimated. While on the one hand demand for fuels will remain unchanged, even now detours from normal routes to take advantage of reduced prices are not a critical factor.

4.2.1 As a consequence ‘fuel tourism’ will expand and spread, turning from an internal problem of the EU (Germany, France and Belgium) into an external problem (for Austria, Hungary, Slovenia, Estonia, Lithuania, Poland, Romania, Bulgaria and Greece).

4.3 The tax revenue benefits for Member States, meanwhile, would be considerable. For the 2007-2030 period, the Commission has estimated them at EUR 35.6 billion for the 25-member EU. This is a significant figure, which will strengthen and expand the redistributive role of the administration and explains the positive reaction of the tax authorities in many Member States. However, it also offers self-evident proof of the burden of costs that would fall on companies and consumers in contradiction with the EU policy for red-tape reduction.

4.4 In conclusion, the proposal for a directive seems justified — subject to a number of reservations expressed by the EESC — in terms of tax harmonisation, competition principles and reducing pollution. However, the EESC believes that the legislators’ final decision should be taken only once proper consideration has been given to the knock-on effects and consequences for various EU policies, in application of the principle of proportionality. More specifically, the following points should be carefully considered:

— the generalised increase in costs (especially in the case of the most recent Member States), and the need to curb inflation;

— the consequences for industrial policies of levelling out the prices of gas oil and petrol, and the possible shift of consumer preference from gas oil vehicles to petrol vehicles or vice versa;

— uniform fiscal policies for all road transport fuels or potential fuels;

— conditions in peripheral regions, where incoming and outgoing haulage costs constitute a significant barrier to growth and employment. The competitive position of some of these regions vis-à-vis non-EU border countries should be studied;

— the impact of increased costs on the external competitiveness of the EU vis-à-vis competitors such as the USA in particular where fuel costs and taxes on companies are considerably lower;

— the consequences in terms of employment: while there are currently complaints that haulage companies in certain countries suffer from competition with others, the adoption of the directive — if it has the decisive effect predicted by the Commission, which the EESC doubts — could have the opposite effect in the future;

— the effects on the overall productivity and efficiency of the road transport sector, which in the EESC’s view may be neutral at best;

— the compatibility of the non-discriminatory refund system with administrative simplification policies.


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