



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 15.12.2000
COM(2000) 853 final

Proposal for a

COUNCIL DECISION

**authorising the Netherlands, in accordance with Article 8(4) of Directive 92/81/CEE, to
apply a differentiated rate of excise duty to low-sulphur diesel**

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. PRESENTATION OF THE REQUEST

In a letter dated 2 October the Netherlands told the Commission it wanted to introduce a differentiated rate of excise duty on low-sulphur diesel (50 ppm), initially for commercial vehicles alone but ultimately for all users of this type of fuel. The Commission sought additional information from the Netherlands authorities to clarify the proposed arrangements; the authorities replied on 31 October.

Subsequently, the Netherlands changed its plans for the cut in excise duty and decided that the derogation would apply to all users from the outset. In a letter dated 16 November the government announced its intention of cutting excise duty on low-sulphur diesel fuel from 1 January 2001, while continuing to comply with the minimum excise duty rates laid down in Community law.

The term "low-sulphur diesel" refers to diesel with a sulphur content meeting the 50 ppm environmental specification set out in Annex IV to 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.¹ Under Article 4(1)(c) of the Directive, use of low-sulphur fuel will in any case be compulsory from 1 January 2005.

The Netherlands explains that the purpose of the proposed reduction is to encourage faster introduction of this environmentally-friendly fuel.

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,² the Council, acting unanimously on a proposal from the Commission, may authorise any Member State to introduce further exemptions or reductions for specific policy considerations.

By letter dated 2 October 2000 the Netherlands sought permission to phase in a differentiated rate of excise duty for low-sulphur (50 ppm) diesel from 1 January 2000. The reduction would initially be for commercial vehicles only,³ and then, as more of this type of fuel came onto the market, it would be extended to all users. However, the Commission feared that this arrangement, spread over a number of years, would lead to undue distortion of competition on the Netherlands market, and it sought clarification from the authorities about various aspects of the scheme, receiving additional information on 31 October 2000.

In a letter dated 16 November, the Netherlands government announced an important change to its original plans in that the differentiated excise duty on low-sulphur (50 ppm) diesel would be available to all users from 1 January 2001. The legislative text confirmed this.

¹ OJ L 350, 28.12.1998, p. 58, amending Council Directive 93/12/EEC (OJ L 74, 27.3.1993, p. 81).

² OJ L 316, 31.10.1992, p. 12, as last amended by Directive 94/74/EC (OJ L 365, 31.12.1994, p. 46).

³ Via a system of selective refunds.

Acknowledging the importance of tax incentives to promote cleaner types of fuel the Commission, following a thorough study of the measure, finds that the lower rate of duty will indeed be of general application, in other words the reduced rate is available to anyone filling up with low-sulphur diesel. The derogation will also be for a limited period, until 1 January 2005, when Directive 98/70/EC⁴ of the European Parliament and of the Council of 13 October 1998 relating to the quality of petrol and diesel fuels, makes use of this type of fuel mandatory.

With the normal rate of excise duty on diesel fuel in the Netherlands at NLG 748.7⁵ per thousand litres and the minimum Community rate at NLG 539.9 per thousand litres, the excise charged on low-sulphur diesel (50 ppm) will be as follows, depending on the availability of this type of fuel as a percentage of all diesel put on the market in the Netherlands:

| (in NLG per 1000 l) | under 20% availability | 20% - 40% | 40% - 60% | 60% and upwards |
|-----------------------------------|---------------------------|-----------|-----------|--------------------|
| Excise duty on low-sulphur diesel | 663.7 | 681.7 | 699.7 | 718.7 |

The reduction proposed by the Netherlands authorities is therefore degressive and complies with the minimum rate referred to in Article of Directive 92/82/CEE.⁶

The cost to the budget would be NLG 150 million for 2001.

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

The availability of sufficient quantities of this type of fuel, of a satisfactory quality, has been verified.

The Commission notes that the Council has already allowed Germany to operate a similar derogation.⁷ In addition, on 15 November it adopted a proposal for a Council decision⁸ seeking a five-year extension of the derogations in force at 31 December 2000 that allow reductions in excise duty to promote the use of cleaner fuel (unleaded petrol and/or diesel) in Denmark, Spain, Greece, Ireland, Portugal, Sweden and the UK

As required by Directive 92/81/CEE, the other Member States have been informed by letter dated 6 December 2000 of the Netherlands' request.

⁴ OJ L 350, 28.12.1998, p. 58, amending Council Directive 93/12/EEC (OJ L 74, 27.3.1993, p. 81).

⁵ Rate in force at 1.1.2001.

⁶ OJ L 316, 31.10.1992, p. 19, as last amended by Directive 94/74/EC (OJ L 365, 31.12.1994, p. 46).

⁷ Decision 2000/283/CE of 10.4.2000 allows Germany to apply a differentiated rate of excise duty to fuels with a sulphur content not exceeding 50 ppm from 1.11.2001 to 31.12.2002, provided it complies with the terms of Council directive 92/82/EEC on the approximation of the rates of excise duties on mineral oils, and in particular the minimum rate of excise duty laid down in Articles 4 and 5.

⁸ COM(2000) 678 final.

3. DECISION

The Commission proposes that the Council authorise the Netherlands to apply a differentiated not exceeding NLG 0.085 per litre to excise duty on low sulphur (50 ppm) diesel fuel between 1 January 2001 and 31 December 2004.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Union,

Having regard to Council Directive 92/81/EEC on the harmonisation of the structures of excise duties on mineral oils and in particular Article 8(4) thereof,⁹

Having regard to the proposal from the Commission,

Whereas:

- (1) 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 further exemptions or reductions for specific policy considerations.
- (2) The Netherlands has asked to be authorised to apply a differentiated rate of excise duty to low-sulphur diesel (50 ppm) from 1 January 2001. The differential, not exceeding NLG 0.085 per litre, is available to all users of this type of fuel.
- (3) This low sulphur diesel fuel complies with the 50 ppm environmental criterion laid down in Annex IV to 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.¹⁰ Under Article 4(1)(c) of the Directive, its use will in any case be compulsory from 1 January 2005.
- (4) The above information has been communicated to the other Member States.
- (5) The measure as envisaged by the Netherlands authorities will be degressive in line with the increasing availability of this type of fuel as a percentage of all diesel put on the market in the Netherlands. It complies with the minimum rate of excise duty referred to in Article of Directive 92/82/CEE.¹¹
- (6) The derogation is sought on environmental grounds - the benefits in terms of air quality are known.

⁹ OJ L 316, 31.10.1992, p. 12, as last amended by Directive 94/74/EC (OJ L 365, 31.12.1994, p. 46).

¹⁰ OJ L 350, 28.12.1998, p. 58, amending Council Directive 93/12/EEC (OJ L 74, 27.3.1993, p. 81).

¹¹ OJ L 316, 31.10.1992, p. 19, as last amended by Directive 94/74/EC (OJ L 365, 31.12.1994, p. 46).

- (7) 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. They are satisfied that adequate supplies of the fuel, of a satisfactory quality, are available in the Netherlands.
- (8) This Decision is without prejudice to the outcome of any future state aid proceedings that may be undertaken in accordance with Articles 87 and 88 of the Treaty, nor does it override the requirement for Member States to notify instances of potential state aid to the Commission under Article 88 of the Treaty.
- (9) The Commission regularly reviews reductions and exemptions to check that they do not distort competition or the operation of the internal market and that they are not incompatible with Community policy on protection of the environment.
- (10) The Council will review this decision on the basis of a proposal from the Commission no later than 31 December 2004 when the authorisation granted by this decision expires,

HAS ADOPTED THIS DECISION:

Article 1

1. In accordance with Article 8(4) of Council Directive 92/81/EEC, the Netherlands is authorised to apply a differentiated rate of excise duty on low-sulphur diesel fuel (50 ppm) from 1 January 2001.
2. The degressive differentiated rate, not exceeding NLG 0.085 per litre, must comply with the terms of Council Directive 92/82/EEC of 19 October 1992 on the approximation of the rates of excise duties on mineral oils,¹² and in particular the minimum rates laid down in Article 5 thereof.
3. The differentiated rate must be accorded to all users of low-sulphur 50 ppm diesel without discrimination.

Article 2

Without prejudice to an early review by the Council on the basis of a proposal from the Commission, this authorisation expires on 31 December 2004.

¹² OJ L 316, 31.10.1992, p. 19, as last amended by Directive 94/74/EC (OJ L 365, 31.12.1994, p. 46).

Article 3

This Decision is addressed to the Netherlands.

Done at Brussels,

*For the Council
The President*