



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 15.3.2007
COM(2007) 107 final

COMMUNICATION FROM THE COMMISSION TO THE COUNCIL

**in accordance with Article 19(1) of Council Directive 2003/96/EC
(operation of private pleasure craft and private pleasure-flying)**

1. INTRODUCTION

In accordance with Article 19(1) of Council Directive 2003/96/EC¹ restructuring the Community framework for taxation of energy products and electricity (hereafter referred to as the "Energy Taxation Directive" or the "Directive"), in addition to the provisions foreseen in the Directive, in particular in its Articles 5, 15 and 17, the Council acting unanimously on a proposal from the Commission, may authorise any Member State to introduce further tax exemptions or tax reductions for specific policy considerations.

The Commission shall examine the requests. Afterwards, it shall either present a proposal to the Council or, alternatively, shall inform the Council of the reasons why it has not proposed the authorisation of such a measure.

Within a broader framework of review of derogations expiring in the Energy Taxation Directive by the end of 2006, Finland, Denmark and Ireland submitted a request for authorisation to derogate from 2007 onwards from the provisions of the Energy Taxation Directive for fuels used for private pleasure-flying, i.e. air navigation not covered by the obligatory exemption provided for in Article 14 (1) (b) of the Energy Taxation Directive. Furthermore Finland and Ireland also requested authorisation to exempt fuel used for navigation in private pleasure craft from excise duty. These letters were registered with the Directorate General for Taxation and Customs Union².

The purpose of this communication is to inform the Council of the reasons why the Commission has not proposed the authorisation of the measures requested by the Member States referred to above.

2. SUMMARY OF THE REQUESTS

2.1. Finland's request

(a) Finland would like to apply an exemption from excise duties to fuel used for the purpose of private pleasure flying.

The objective of the measure is to maintain the operating conditions for recreational aviation in Finland. According to the Finish authorities, a reduction in recreational aviation would negatively affect the knowledge and flying ability of air navigators and their willingness to carry out civil missions. It would also reduce business activities relating to aviation. Therefore, it would have negative consequences on employment and competition in the aviation sector.

Finland also maintains that the taxation of aviation fuel would reduce the number of aviation fuel dispensing points with the result that supplies of such fuel would be hard to find thereby increasing safety risks associated with the use of vehicle fuel in aircraft as an alternative.

¹ Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for taxation of energy products and electricity (OJ L 283 of 31.10.2003 p. 51; Directive last amended by Directives 2004/74/EC and 2004/75/EC (OJ L 157 of 30 April 2004, p. 87 and p.100).

² Letters registered on 5 December 2006 (Finland), on 13 November 2006 (Denmark) and on 14 December 2006 (Ireland)

Furthermore, Finland points to the insignificant revenue gain and the small benefit in terms of reduced carbon emission associated with the introduction of the general tax treatment due to the reduced amount of fuel consumed by recreational aviation in that country.

According to Finland, the low tax revenue on the one hand and the sizeable administrative costs on the other, mean that the cost effectiveness of the measure will be very poor. Registers of aircraft do not allow differentiation between recreational and commercial use of aircraft and therefore, the measure would lead to high administrative burdens resulting from the need to implement a complex system of control consequent upon the shift to standard tax treatment.

(b) Finland also would like to apply a reduced rate of taxation (7.06 cent per litre) to gas oil used as fuel for private pleasure navigation.

The objective of the request is to preserve the operating conditions for both services and industry associated with boating at their current level and to ensure the preservation of the conditions for pleasure boating. Finland further claims that refusal of the request will have disproportionate negative effects on both the boating sector and many small businesses associated with it

In addition, Finland maintains that there are minimal benefits to be gained from applying the standard tax treatment in comparison to the costs and other consequences associated with the expiry of the derogation. It also emphasises the cost ineffectiveness of the tax measure. Finland further points to the insignificant revenue gain and small benefit in terms of emissions saved associated with the introduction of the general tax treatment and to the fact that the general situation regarding emissions has improved significantly in Finland since 2004 following the introduction of national legislation on the quality of certain fuels.

Furthermore, Finland highlights the compliance costs for fuel suppliers as well as the administrative costs and enforcement difficulties for the administration associated with the end of the derogation. Moreover, according to Finland, the expiry of the derogation will raise safety issues by reducing the number of refuelling stations along the coast.

Finland also maintains that the derogation pursues regional policy objectives, in particular in sparsely populated regions with declining business structures which are difficult to reach. Finland aims to keep the entire country inhabited and, therefore, a significant amount of national and EU funds have been spent on the development of remote areas. In the view of Finland, the expiry of the derogation would run contrary to these goals and the investments that have been made.

Both requests provide for a date of termination by 31 December 2012.

2.2. Denmark's request

Denmark would like to apply an exemption from excise duties to fuel used for the purpose of private pleasure flying. The purpose of the measure is to avoid the administrative burden resulting from the need to implement a complex system of controls related to the shift to the standard tax treatment.

The request does not provide for a date of termination.

2.3. Ireland's requests

(a) Ireland would like to apply a reduced rate of excise duty to fuel used in private pleasure flying (€276.52 per 1,000 litres for aviation gasoline and €16.00 per 1,000 litres for jet kerosene)

Two arguments are cited in support of the request.

The first is that the end of the derogation would impose excessive compliance costs on suppliers of aviation fuels. There could also be very significant one-off costs for airfields/aerodromes.

The second argument highlights the disproportionate administrative costs for the tax administration, which would need to divert resources from other activities to implement a proper system of control.

(b) Ireland would also like to apply a reduced rate of taxation (€47.36 per 1,000 litres) to gas oil used as fuel for private pleasure navigation.

The arguments presented by Ireland stress the importance of the activity for tourism and the negative effects of the end of the derogation on both the boating sector and many small businesses associated with it.

In addition, Ireland points out that the derogation also pursues regional policy objectives and its ending would be inconsistent with previous national and Community policies. It would also restrict Ireland's ability to implement its regional policy which could be seen as the Commission interfering in what is essentially a domestic matter. The sector has had much investment both from private and public funds, including European funding.

Furthermore, Ireland again highlights the compliance costs for the industry and marinas as well as the administrative costs and enforcement difficulties for the administration associated with the end of the derogation.

The requests do not provide for a date of termination.

3. BACKGROUND TO THE REQUESTS

Fuel used for the purposes of private pleasure flying and for the purposes of private pleasure navigation has been taxable in the Community since 1993³, unless a particular derogation was available to some Member State.

With the aim of making Community transport, environment and fiscal policy more coherent, the Commission had already proposed to abolish these derogations for the first time in 1996⁴. Subsequently, a gradual phasing-out of these derogations was initiated by the Commission in 2000 when it stated that the derogations should end with the entry into force of the Energy

³ Council Directive 92/81/EEC of 19 October 1992 on the harmonization of the structures of excise duties on mineral oils (OJ L 316 of 31.10.1992); Directive later repealed together with Council Directive 92/82/EEC of 19 October 1992 on the approximation of the rates of excise duties on mineral oils as from 31 December 2003 by means of Council Directive 2003/96/EC.

⁴ COM (1996) 549 of 14 November 1996.

Taxation Directive or, in any case, on 31 December 2002 at the latest⁵. In the end, the derogations were extended until 31 December 2006 and were later incorporated into the Energy Taxation Directive (Article 18 and Annex II) with the view to facilitating their smooth phasing-out.

In its June 2006 Communication *Review of derogations in Annexes II and III of Council Directive 2003/96/EC that expire by the end of 2006* (hereafter referred to as "the June 2006 Communication")⁶ the Commission stated that the favourable tax treatment of fuel used for the activities in question, compared to fuel used for comparable (transport or leisure) activities, should not be renewed. The Commission at the same time invited Member States, in cases where they considered that for specific policy considerations a further derogation was still necessary, to submit a request in accordance with Article 19 of the Directive, duly justifying the policy needs.

4. EVALUATION BY THE COMMISSION

In the broader framework of review of derogation expiring in the Energy Taxation Directive the Commission recently had the occasion to examine similar requests for derogation submitted by some other Member States. On 30 November 2006, the Commission adopted two communications⁷ in which it explained the reasons why, on the basis of the analysis carried out, it could not respond positively to those requests.

The Commission considers that Finland, Denmark and Ireland have for the most part presented the same arguments as those that have been addressed in detail in the two Communications adopted on 30 November 2006. The reasons set out in these Communications are summarised below and, where necessary, completed by points relating to more specific arguments raised by the applicant Member States.

The Commission cannot accept the arguments put forward and based on consequences which are merely inherent in the switch from the derogation to standard taxation, such as administrative burdens, compliance and enforcement difficulties or costs as well as safety issues.⁸ Indeed, the Council has deliberately chosen to subject private pleasure flying and private pleasure navigation to standard taxation, and to grant derogations only in order to overcome initial difficulties. Therefore, such arguments cannot be viewed as corresponding to specific policy considerations for the purposes of Article 19 of the Energy Tax Directive. Moreover, the interests and policies referred to in this provision, relating to the internal market, fair competition, environment, energy and transport aspects clearly plead against the granting of the derogations requested.⁹

⁵ COM (2000) 678 of 15 November 2000.

⁶ COM(2006)342 of 30 June 2006 *Review of derogations in Annexes II and III of Council Directive 2003/96/EC that expire by the end of 2006*.

⁷ COM(2006) 743 of 30 November 2006 *Communication from the Commission to the Council in accordance with Article 19(1) of Council Directive 2003/96/EC (operation of private pleasure craft)* and COM(2006) 742 of 30 November 2006 *Communication from the Commission to the Council in accordance with Article 19(1) of Council Directive 2003/96/EC (private pleasure flying)*

⁸ Safety issues are in any event dealt with in corresponding legislation. They are unrelated to the rules of the Energy Tax Directive.

⁹ For details, cf. documents COM(2006)742 and COM(2006)743, pp. 5 and 6 respectively.

As regards the aspect of "competition" raised by Finland with regard to private pleasure navigation, this reflects if anything a distortion which has existed in the past and which should not be perpetuated.¹⁰

Finland's arguments concerning knowledge and ability relevant for air navigation and willingness to carry out civil missions cannot be accepted either. The relating needs are very specific and may be satisfied by targeted measures, better fitted in nature and in scope, without the community interests mentioned above being affected by an anomalous exemption from harmonised taxes. This equally applies to the argument made by Finland concerning sparsely populated regions with declining business structures which are difficult to reach.¹¹

Again under the regional aspect, the Commission would like to point out that the derogations granted in the past to Finland and Ireland have never been formally considered as an instrument of Community regional policy. In addition, the support provided by the European Funds was neither targeted, specifically, to the operation of private pleasure craft, nor was it based on the premise that Finland and Ireland could continue to derogate from the Energy Tax Directive.

Finland and Ireland finally also raise a more general proportionality argument, claiming that emissions caused by pleasure-flying and private pleasure navigation within the total emitted by the transport sector as a whole are low and/or that the switch to standard taxation is ineffective from a revenue point of view. These arguments erroneously take the exemption as a starting point and not the deliberate choice of the legislator, to subject the activities in point to standard taxation. In this perspective, proportionality does not require unequal treatment with comparable transport or leisure activities, nor can particular importance be attached to the fact that implementing costs may be different from those in other fields of excise duty, since differences of the kind are in the nature of tax administration. None of these arguments translate specific policy considerations for the purposes of Article 19 of the Directive.¹²

5. CONCLUSION

All in all, the Commission considers that Finland, Denmark and Ireland have not presented any specific policy considerations that would justify the need to derogate further from the legislation enacted in the EU by unanimity already on two occasions and that would furthermore justify the existence of a fiscal measure that clearly contradicts several Community policies. The arguments put forward by the Member States concerned represent the consequences of the existence of the derogation itself over a long period of time.

Member States have by now had sufficient time to adjust to the new situation taking into account the fact that this and similar derogations have been discussed in the Community since at least 1996, and that the Commission has repeatedly insisted on the necessity to phase out the derogation.

Should the expiry of the derogation cause difficulties in very specific or particular circumstances and provided that they respect Community law in all respects, whether related

¹⁰ Cf. COM(2006)742, p. 6.

¹¹ Cf. COM(2006)742, p. 6.

¹² Cf. COM(2006)742, p. 6; COM(2006)743, pp. 6 and 7.

to energy taxation or otherwise¹³, the applicant Member States may adopt measures aimed at alleviating or mitigating problems of transition to the regime of standard taxation.

The Commission therefore concludes that the conditions set out in Article 19 are not fulfilled. On this basis, **the Commission does not propose the authorisations requested.**

¹³ Including the Treaty rules on State aid in particular.