COUNCIL DECISION

of 25 March 2002

authorising Italy to apply a differentiated rate of excise duty to fuels containing biodiesel in accordance with Article 8(4) of Directive 92/81/EEC

(2002/265/EC)

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) As part of a pilot project covering the period 1 July 1998 to 30 June 2001, Italy conducted a trial on the conditions for the use of biodiesel. Exemption from excise duty was granted for a maximum of 125 000 tonnes of biodiesel per year. By letter of 23 April 2001, the Italian authorities applied to the Commission for a derogation allowing them to apply an exemption from excise duty on biodiesel and other biofuels in accordance with Article 8(4) of Directive 92/81/EEC, for a period of three years from 1 July 2001 to 30 June 2004. In order to obtain the information it required to evaluate the request, the Commission sent additional questions by letters dated 16 May and 8 August 2001, to which the Italian authorities replied on 17 July and 28 September 2001 respectively. A meeting was held between Commission representatives and the Italian authorities on 15 October 2001. A letter from the Italian authorities on 22 October 2001 enabled the Commission to finalise its evaluation of the application for a derogation. Pending approval by the Council of the requested exemption, Italy has suspended the tax reduction scheme.

(2) Italy has applied for a differentiated rate of excise duty to be authorised on biodiesel used as an additive to diesel in quantities of less than 5 % and as a motor fuel mixed with diesel in a proportion of approximately 25 %, mainly for the use of urban service vehicle fleets. In the latter case, in view of the high percentage contained in the mixture, checks should be carried out on the adjustment of engines to the fuel to avoid excessive emission of pollutants.

(3) The other Member States have been notified of this request.

(4) The development of renewable energies and biofuels in particular has been encouraged since 1985 by the Community. Council Directive 85/536/EEC of 5 December 1985 on crude oil savings through the use of substitute fuel components in petrol [2] stresses the role of biofuels in reducing Member States' dependence on oil imports and authorises the incorporation into petrol of up to 5 % of ethanol by volume and up to 15 % of ETBE by volume. Under Council Decisions 93/500/EEC [3] and 98/352/EC [4] and Decision 646/2000/EC of the European Parliament and of the Council [5], the Altener programme on promoting renewable energies in the Community was adopted with the aim of securing a market share for biofuels of 5 % of total motor vehicle fuel consumption by 2005. The 1997 White Paper on renewable sources of energy further recommended setting an objective of the production of 18 million tonnes of liquid biofuels by 2010 as part of an overall goal of doubling

[1] Directive published in OJ L 316, 31.10.1992, p. 12. Directive as last amended by Directive 94/74/EC (OJ L 365, 31.12.1994, p. 46).
[2] OJ L 334, 12.12.1985, p. 20. Directive as last amended by Directive 87/441/EEC (OJ L 238, 21.8.1987, p. 40).
[3] OJ L 235, 18.9.1993, p. 41.
[4] OJ L 159, 3.6.1998, p. 53.
[5] OJ L 79, 25.10.2000, p. 1.

the share of renewables in EU energy consumption by the same year. The Commission's Green Paper 'Towards a European strategy for energy supply security' stresses the key role of tax instruments in achieving these aims by reducing the difference in cost price between biofuels and competing products. Lastly, on 7 November 2001, the Commission adopted an action plan and two proposals for directives on encouraging the use of substitute fuels in the transport sector, starting with regulatory and tax measures designed to promote biofuels.

(5) The derogations requested by the Italian authorities are therefore in line with the Community's policy of developing the biofuel sector, in the interests of protecting the environment and ensuring security of energy supply.

(6) The reductions in excise duty proposed by Italy are proportional to the percentage of biofuel contained in the final product. Moreover, the effective rates of excise duty are higher than the applicable Community minimum rates, in accordance with Council Directive 92/82/EEC of 19 October 1992 on the approximation of the rates of excise duties on mineral oils [1]:

Condition of use	5 % biodiesel mix	25 % biodiesel mix
Community minimum	EUR 245 / 1 000 l	EUR 245 /1 000 l
Effective excise rate applied to final product (July 2001 to June 2002)	EUR 362,6 /1 000 l	EUR 286,3 /1 000 l

(7) The Italian programme is of a limited duration of three years. An annual quota of 300 000 tonnes of biodiesel will be eligible for the differentiated rate of excise duty.

(8) The Commission regularly reviews reductions and exemptions to check that they do not distort competition or hinder the operation of the internal market and are not incompatible with Community policy on protection of the environment, energy and transport,

HAS ADOPTED THIS DECISION:

Article 1

1. Italy is authorised to apply differentiated rates of excise duty on mixtures used as motor fuels containing 5 % or 25 % of biodiesel until 30 June 2004.

2. The reduction in excise duty may not be greater than the amount of excise duty payable on the volume of biofuels present in the products eligible for the reduction.

3. The rates of duty applicable to the mixtures referred to in paragraph 1 must comply with the terms of Directive 92/82/EEC, and in particular the minimum rate laid down in Article 5 thereof.

Article 2

The reduction in excise duty shall be adjusted to take account of changes in the price of raw materials to avoid over-compensating for the extra costs involved in the manufacture of biofuels.

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

Article 3

This Decision shall expire on 30 June 2004.

Article 4

This Decision is addressed to the Italian Republic.

Done at Brussels, 25 March 2002.

For the Council
The President
A. M. BIRULÉS Y BERTRÁN