II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 3 May 2002

on the granting of a national aid by the authorities of the Kingdom of the Netherlands in favour of road transport undertakings

(2002/361/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 88(2), third subparagraph, thereof,

Having regard to the request made by the Government of the Kingdom of the Netherlands on 4 February 2002,

Whereas:

(1) Article 8(4) of Council Directive 92/81/EEC of 19 October 1992 on the harmonisation of the structures of excise duties on mineral oils [1] allows the Council to authorise Member States to introduce exemptions or reductions in the excise duty charged on mineral oils for specific policy purposes.

(2) Under Article 3(5), first indent of Council Decision 1999/880/EC [2] and Article 2 of Council Decision 2001/224/EC of 12 March 2001 concerning reduced rates of excise duty and exemptions from such duty on certain mineral oils when used for specific purposes [3], until 31 December 2002, by way of derogation from the provisions of Council Directive 92/82/EEC [4], the Netherlands is authorised to continue to apply reduced rates of excise duty on diesel fuel used in commercial vehicles, provided that the rates respect the obligations laid down in Directive 92/82/EEC and in particular the minimum rates laid down in Article 5 thereof.

(3) The Netherlands has included a provision in its national legislation on excise duty which provides for a refund of part of the excise duty on diesel fuel used in heavy goods vehicles.

(4) By means of a letter dated 18 April 2001 (published in OJ C 160, 2.6.2001), the Commission notified the Netherlands its decision to initiate the procedure laid down in Article 88(2) of the Treaty concerning the abovementioned measures.

(5) Environmental and energy conservation purposes prompted the Netherlands authorities to raise the rate of excise duty on diesel oil. The increased taxation as well as the high rise of costs due to the rise of the international price of crude oil had severe negative repercussions on the activities in the road transport sector. The introduction of compensatory measures to avert serious economic and social difficulties for the road sector was necessary. No other remedy was adequate.

(6) The measure is not discriminatory. The fact that some firms or sectors benefit from certain tax measures does not in itself mean that they are in form or substance contrary to the common interest.

(7) The measure is temporary and will expire on 1 October 2002. With effect from 1 January 2002, the refundable amount has been substantially reduced.

(8) Exceptional circumstances therefore exist, making it possible to consider such aid, by way of derogation and to the extent strictly necessary to remedy the economic and social difficulties of the road transport sector concerned which has arisen, to be compatible with the common market,

[1] 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 331, 23.12.1999, p. 73.
[3] OJ L 84, 23.3.2001, p. 23.
[4] OJ L 316, 31.10.1992, p. 19. Directive as last amended by Directive 94/74/EC.

HAS ADOPTED THIS DECISION:

Article 1

The measures adopted by the Netherlands in accordance with Article 3(5), first indent of Decision 1999/880/EC and Article 2 of Decision 2001/224/EC shall be considered to be compatible with the common market.

Article 2

This Decision is addressed to the Kingdom of the Netherlands.

Done at Brussels, 3 May 2002.

For the Council

The President

J. PIQUÉ I CAMPS