COUNCIL DECISION
of 3 May 2002
on the granting of aid by the French Government for road transport undertakings

(2002/363/EC)

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the application made by the Government of the French Republic 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 the second indent of Article 3(3) 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], France is authorised, by way of derogation from the provisions of Council Directive 92/82/EEC [4], to continue to apply, until 31 December 2002, differentiated rates of excise duty to diesel fuel used in commercial vehicles, provided that those differentiated rates comply with the obligations laid down in Directive 92/82/EEC and in particular the minimum rates of excise duty laid down in Article 5 thereof.

(3) In Article 26 of its 1999 Finance Act (No 98-1266 of 30 December 1998) France introduced an arrangement for the partial reimbursement of the excise duty applicable to diesel fuel for certain types of goods transport by road, with effect from 11 January 1999, consolidated in Article 265f of the Customs Code. At national level that measure has been extended to cover occasional passenger transport.

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

(5) For environmental and energy-conservation reasons, France adopted taxes on diesel oil that were much higher than the Community minimum. The increase in the tax burden, not to mention the very high increase in the price of crude oil, has had extremely negative repercussions on the activities of the road transport sector. In these circumstances, France has been compelled to introduce compensatory measures to meet the considerable economic and social difficulties to which the sector is prey, no other remedy being sufficient.

(6) The measure is not discriminatory as it is open to all firms established within the Community that obtain diesel fuel in France. Even when account is taken of this reimbursement arrangement, the TIPP rate in France is still much higher than the Community minimum rate for diesel fuel. 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 arrangement is temporary. It will cease to apply on 31 December 2002. In 2002 the annual reimbursement will be substantially reduced compared with the figure for 2001.

(8) There are therefore exceptional circumstances that make 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 transporters concerned, 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 France in accordance with the second indent of Article 3(3) of Decision 1999/880/EC and with Article 2 of Decision 2001/224/EC shall be considered compatible with the common market.

Article 2

This Decision is addressed to the French Republic.

Done at Brussels, 3 May 2002.

For the Council

The President

J. PIQUÉ I CAMPS