# COMMISSION DECISION

## of 11 March 2008

## on State aid (Germany) exemption from mineral oil tax for greenhouse undertakings

*(notified under document number C(2008) 860)*

**(Only the German version is authentic)**

(2008/715/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

Having called on interested parties to submit their comments pursuant to the provision cited above and having regard to their comments [1],

Whereas:

### I. PROCEDURE

(1) By letter of 19 April 2005, registered as received on 20 April 2005, Germany notified a measure granting a tax refund for greenhouses in 2005 and 2006. The measure contains a suspensive clause making its implementation dependent on approval by the Commission. The State aid case was registered under the number N 189/05.

(2) The measure is an extension of a non-notified scheme (2001-2002), which was already the subject of an extension (2003-2004), itself also non-notified. Both those non-notified measures were entered in the register of non-notified aid under the number NN 36/2005.

(3) By letter of 20 October 2005 the Commission opened the formal investigation procedure in accordance with Article 88(2) of the EC Treaty [2]. In response Germany commented by letter of 22 November 2005. The Commission received several observations from interested third parties. Germany commented on these by letter of 14 June 2006, and provided further information by letter of 12 December 2007.

### II. DESCRIPTION

(4) On 16 August 2001, by means of the Law amending the Mineral Oil Tax Law, Germany introduced a two-year tax reduction for fuels (heating oil, natural gas, liquid gas) for use in greenhouses and covered growing areas. The aid was granted in the form of a tax refund.

(5) By means of the Law on the further development of the ecological tax reform of 23 December 2002, the tax refund, which had originally been granted for fuels used between 1 January 2001 and 31 December 2002, was extended until 31 December 2004.

(6) By means of the Law on the implementation of the guidelines of 9 December 2004, Germany intended to retain that tax refund until the end of 2006 and notified the extension measure as State aid N 189/05.

(7) The tables in Annex I show the refund rates and financial impact of the tax refund in favour of greenhouses, compared to the rest of the agricultural sector.

(8) The Commission opened the formal investigation procedure for the following reasons:

(9) The measure constitutes State aid. The German authorities argued that this case was covered by the exemption contained in the Council Directives on the taxation of energy products (Directive 92/81/EEC, replaced from 2003 by Directive 2003/96/EC). Under those Directives, Member States could grant tax reductions on mineral oils used in horticulture.

[1] OJ C 67, 18.3.2006, p. 23.
[2] See footnote 1.

(10) The Commission expressed doubts in respect of this view. Under the Directives on energy products, and in particular Directive 2003/96/EC, the tax measures which Member States may adopt must be compatible with Community law and derogating provisions are to apply without affecting the rules on competition. The measures must not impair the smooth operation of the internal market or lead to distortions of competition.

(11) Moreover, this aid would appear to have distorted competition, since a reduced tax burden on energy products in a highly energy-intensive economic sector such as greenhouse cultivation had a direct effect on production costs and hence on competitiveness.

(12) It was emphasised that this refund had been granted selectively since it differentiated between open-air and greenhouse cultivation within the horticultural sector.

(13) The Commission emphasized that tax reductions could be granted, subject to the rules on competition. At that stage, there seemed to be no provisions under the State aid rules which would enable Member States to grant fiscal aid of that nature.

(14) The Commission at that stage considered that this measure constituted operating aid which was incompatible with the common market.

## III. GERMANY'S COMMENTS

(15) Germany commented both on the matter itself and on the procedure.

(16) Germany argued that the tax reduction was not selective, and that it was in the nature of the matter that heating materials would be used only in covered areas.

(17) In Germany's view, if there were selectivity, and therefore aid were being granted, that aid would be justified under Article 87(3)(c) of the EC Treaty. Germany claimed that there was special justification for the aid under Article 8(2)(f) of Directive 92/81/EEC and under its successor provision, Article 15(3) of Directive 2003/96/EC. Germany was of the opinion that the measure constituted 'implementation of the authorisation granted to Member States (…) [by the above-mentioned Directives] (…)'. In Germany's view, it would be contradictory for the Commission (which, after all, proposed those Directives) to put the counter argument to Germany that the measure posed a risk to the common market. According to Germany, the competition-law aspects of the Directives in question did not have priority.

(18) The German Government was of the opinion that point 52 of the Community guidelines on State aid for environmental protection [3] was applicable because an existing tax had been increased significantly. It argued that the Mineral Oil Tax Law, and the Energy Tax Law which had taken its place, should be seen as an existing environmental tax. They stated that the energy tax rates contained therein had been increased significantly as of 1 April 1999 through the ecological tax reform (as shown in the overview in Annex I).

(19) The objective of those provisions had been to increase demand for energy-saving, resource-efficient products and drive the development of environmentally friendly procedures and technologies. The German Government argued that the legislation relating to the taxation of energy had thus had a significant effect on environmental protection.

(20) In this context, the German Government made reference to a study on energy efficiency in greenhouse cultivation which had been conducted by the Centre for Business Management in Horticulture at the Institute of Biological Production Systems at Hannover's Leibnitz University.

[3] OJ C 37, 3.2.2001, p. 3.

(21) Higher taxation on energy, it was claimed, was a particular burden on undertakings which heated greenhouses or other covered areas, as the operations of those undertakings were energy-intensive. In view of this, it was argued, there had been cause to lessen the burden on those undertakings temporarily by introducing a fiscal incentive. It was also argued that there had still been a need for this measure after 31 December 2002 (the date on which the original tax reduction had been due to expire). For this reason, the Law on the further development of the ecological tax reform extended the validity of the tax reduction by two years until 31 December 2004. In light of the particularly difficult competitive situation in 2005 and 2006 faced by agricultural and forestry undertakings which heated their greenhouses or covered areas for the purpose of cultivating plants, it had been decided to grant the tax reduction for that period also.

(22) The German Government considered the requirements laid down in point 52 of the Community guidelines to have been satisfied. Consequently, it was argued that the provisions of point 51(1)(b) of the Community guidelines could be used as justification for having granted State aid in the form of a tax reduction for the period 2001-06.

(23) The German Government argued that, where the tax reduction affected a Community tax which had been harmonised in accordance with Directive 92/81/EEC or Directive 2003/96/EC, the tax reduction was compatible with the common market, at least in cases where it was not below the minimum Community tax rate. The same applied to the tax reduction (i.e. compatibility with the common market) according to Germany, if a Community tax was not involved, at least in cases where the reduction was over 20 % of the domestic tax.

(24) Germany also stated that, during consultations on the draft law introducing the ecological tax reform, the issue had arisen of reducing the burden on agricultural and forestry undertakings which heated their greenhouses or covered areas for the purpose of cultivating plants because those undertakings would have been affected significantly by higher taxation due to their energy-intensive operations. Due to the enormous time pressure on passing this legislation through parliament, and the fact that the legislation had originally beens due to enter into force on 1 January 1999, it had been decided to include the agricultural and forestry sector in the tax reduction mechanism for the manufacturing sector. The introduction of the tax reduction in question was the result of a separate amendment to the Law on mineral oil tax, which had entered into force on 1 January 2001. The first extension of the tax reduction (for the period 2003-2004) was adopted under the Law on the further development of the ecological tax reform.

(25) Germany argued that it had been led to believe that the tax reduction in question was lawful during its communications with the Commission beforehand. Germany referred in particular to verbal statements made by Commission officials during a meeting of the working group 'Competition conditions in agriculture' on 26 and 27 October 1999. In any event, the Commission had, at the latest, been made aware of the facts of the case by Germany's communication of 29 August 2001, to such an extent that at that juncture the Commission would have been able to assess the compatibility of the tax reduction with the common market. Germany expressly invoked Article 10(1) and the second sentence of Article 14(1) of Regulation (EC) No 659/1999 [4]. Any recovery of the aid could not, Germany argued, be compatible either with the principles of the protection of legitimate expectations and legal certainty or with the principles of proper administration. According to Germany the observations by interested third parties showed that their expectations were legitimate.

## IV. **THIRD PARTY OBSERVATIONS**

(26) The interested third parties essentially put forward arguments which Germany had already used. They argued that the measures were also not selective because they were open to all agricultural and forestry undertakings operating greenhouses and covered areas. They also argued that Community trade was not disrupted. The area under glass had been drastically reduced in the years concerned and imports to Germany of competing products had increased. In any case, Germany's production volumes were hardly significant, compared to intra-Community trade in vegetables. Furthermore, open-air crops and those under glass were not in direct competition with each other and most of them could not be substituted for each other. If aid existed, it could be justified on the basis of Article 87(3)(c) of the EC Treaty since it helped the development of the horticultural sector. The aid enabled the horticultural sector to adjust to increased

[4] OJ L 83, 27.3.1999, p. 1.

energy prices and reduced the 'distortions of competition' resulting from the significantly lower gross energy prices in other Member States and adversely affecting undertakings producing in Germany. It could not be claimed that the German aid was 'distorting competition'. On the contrary, it (partially) compensated for an existing 'distortion of competition' which put Germany's greenhouse cultivation at a disadvantage. Because they were limited in time, the measures gave the sector a powerful incentive to adapt to increasing energy prices by implementing energy-saving and rationalisation measures and making the appropriate investment. As a result the measures had to be admissible because otherwise the intention of Directive 92/81/EEC and Directive 2003/96/EC would be undermined or inadmissibly restricted. In the alternative, with reference to the RSV judgment ([5]) of the European Court of Justice it was argued that protecting the legitimate expectations of the beneficiaries precluded any recovery of the aid, since the Commission already knew about the aid on 29 August 2001 but did not make it the subject of an investigation procedure until 20 April 2005 when it requested information. Moreover, in the event of recovery, a large number of undertakings risked becoming insolvent.

## V. **ASSESSMENT OF THE MEASURE**

(27) Under Article 43 of Regulation (EC) No 2200/96 of 28 October 1996 on the common organisation of the market in fruit and vegetables ([6]), Articles 87, 88 and 89 of the EC Treaty apply to the production of the goods specified in the Regulation and to trade in those goods. The production of, and trade in, fruit and vegetables is therefore subject to the Community provisions on granting State aid.

(28) Under Article 87(1) of the EC Treaty, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods is, insofar as it affects trade between Member States, to be deemed incompatible with the common market.

(29) The ECJ has ruled that, when considering whether a State measure constitutes aid within the meaning of Article 87 of the EC Treaty, it is to be determined whether the recipient undertaking has received economic advantage which it would not have received under normal market conditions ([7]) or has been spared costs which it would normally have had to bear from its own resources ([8]).

(30) The measure in the form of tax refunds gives the undertakings which receive them economic advantages in the form of a lower tax burden. This saves them costs which, under normal circumstances, they would have had to bear from their own resources. The aid is granted from public funds to certain undertakings, namely agricultural and forestry undertakings engaged in production using greenhouses and covered areas.

(31) The aid is not granted to all undertakings and is therefore selective. It follows that the measure constitutes aid within the meaning of Article 87(1) of the EC Treaty.

(32) The tax refund is also likely to distort competition ([9]) and to affect trade between Member States ([10]).

(33) Germany is a significant producer of greenhouse products. Trade in these products is also significant, as the following statistics show.

([5]) Case 223/85 Rijn-Schelde-Verolme (RSV) Maschinefabriken en Scheepswerven N.V. v Commission [1987] ECR 4617.
([6]) OJ L 297, 21.11.1996, p. 1.
([7]) Case C-39/94, SFEI and others, [1996] ECR I-3547, paragraph 60.
([8]) Case C-301/87, France v Commission, [1990] ECR I-307, paragraph 41.
([9]) According to the case law of the ECJ, the improvement of an undertaking's competitive position by means of State aid generally entails a distortion of competition vis-à-vis competing undertakings not in receipt of such support (Case C-730/79 [1980] ECR 2671, paragraphs 11 and 12).
([10]) See statistics below (source: Eurostat).

| | 2001 | 2002 | 2003 | 2004 | 2005 |
|---|---|---|---|---|---|
| Vegetables | | | | | |
| *Import* | | | | | |
| Value (in thousands of euro) | 6 705 483 | 6 936 685 | 7 049 757 | 6 845 103 | 6 979 459 |
| Quantity (in tonnes) | 5 346 123 | 5 365 972 | 5 599 183 | 5 621 769 | 5 464 528 |
| *Export* | | | | | |
| Value (in thousands of euro) | 867 832 | 985 187 | 1 030 880 | 1 045 543 | 1 122 869 |
| Quantity (in tonnes) | 2 227 612 | 2 243 611 | 2 133 544 | 2 164 328 | 2 345 796 |
| Flowers | | | | | |
| *Import* | | | | | |
| Value (in thousands of euro) | 3 413 206 | 3 614 349 | 3 673 148 | 3 691 913 | 3 723 794 |
| Quantity (in tonnes) | 1 285 460 | 1 442 078 | 1 547 266 | 1 573 104 | 1 671 568 |
| *Export* | | | | | |
| Value (in thousands of euro) | 405 250 | 482 993 | 546 938 | 526 374 | 573 022 |
| Quantity (in tonnes) | 235 333 | 326 613 | 286 080 | 283 426 | 355 969 |

(34) Germany's greenhouse products are in competition with the greenhouse products of other Member States. Not only have Germany and the interested third parties not disputed this, but it has also been explained that greenhouse undertakings were exempted from the tax precisely in order to improve their competitive position vis-à-vis Dutch competitors which, according to the same information, enjoy more favourable production conditions because of lower gross prices for energy. Direct competition is therefore involved. An interested third party's assertion that greenhouse products were not in direct competition with open-air products is therefore immaterial considering that there is competition between German greenhouse products and greenhouse products of other Member States, including Dutch greenhouse products.

(35) Consequently, the exemption from taxes otherwise due is likely to distort competition. The argument that energy prices are more favourable in other Member States is unimportant ([11]). Even if it were true that the starting points differed as regards this production factor, this would not alter the fact that the tax refund granted by Germany is likely to distort competition.

(36) The aid is also likely to impair trade between the Member States. This is shown by the not insignificant trade flows, as demonstrated above. Even if it were true, as has been argued, that the area under glass has been drastically reduced and imports to Germany have increased, that in no way proves that trade has not been disrupted. It cannot be ruled out that without the measure the growing area would have been even more drastically reduced and/or imports to Germany would have increased still further. Since intra-Community trade with Germany in greenhouse products exists, it is not a matter of how significant Germany's production quantities are to be regarded.

([11]) Case 173/73 Italy v Commission, [1974] ECR 709, paragraphs 36-40.

(37) The ban on granting State aid under Article 87(1) of the EC Treaty does not apply without exception, however. The Commission has examined whether any of the exceptions to the ban in principle on aid under Article 87(1) of the EC Treaty apply.

(38) The exceptions provided for in Article 87(2) of the EC Treaty, which concern aid of a social character granted to individual consumers, aid to make good the damage caused by natural disasters or exceptional occurrences and aid granted to the economy of certain areas of the Federal Republic of Germany, are irrelevant in the present context regardless of who the beneficiaries of the scheme at issue are.

(39) The Commission considers that the exceptions provided for in Article 87(3)(a) of the EC Treaty concerning the development of certain areas are not applicable to the scheme at issue because the measure does not comprise aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment.

(40) As for the exception provided for in Article 87(3)(b) of the EC Treaty, it is sufficient to note that the tax scheme at issue is not an important project of common European interest and does not seek to remedy a serious disturbance in the German economy. Nor does it seek to promote culture and heritage conservation within the meaning of the exception provided for in Article 87(3)(d) of the EC Treaty.

(41) The Commission would point out in this connection that neither the German authorities nor any interested parties invoked the above-mentioned exceptions in the course of the investigation procedure.

(42) The only exception that could be considered is therefore that contained in Article 87(3)(c), according to which an aid may be considered compatible with the common market if it is found to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest.

(43) The Community guidelines for State aid in the agriculture sector ([12]) apply to the measures at issue here ([13]).

(44) However, neither those Community guidelines nor any other rules relating to agriculture provide in respect of the measures described above for express exemptions from the ban in principle on aid contained in Article 87(1) of the EC Treaty. In particular the Commission notes that point 4 of the Community guidelines, which relates to investment aid, does not apply in the present case. The tax refund is not linked to carrying out investment.

([12]) OJ C 232, 12.8.2000, p. 17.

([13]) Commission notice on the determination of the rules applicable for the assessment of unlawful State aid – OJ C 119, 22.5.2002, p. 22.

(45) Germany and a number of interested third parties are of the opinion that a special justification for the aid results from Article 8(2)(f) of Directive 92/81/EEC and Article 15(3) of its successor, Directive 2003/96/EC, and that this would be permitted under point 3.4 of the Community guidelines for State aid in the agriculture sector.

(46) Having regard to Directive 2003/96/EC, it is stated in recitals (15) and (24) that measures introducing differentiated rates of taxation must be in accordance with the rules on the internal market and competition in order not to result in distortions of competition. The fact that the competition rules must be applied is also confirmed in Article 26 of Directive 2003/96/EC by pointing out to Member States that measures such as tax refunds within the meaning of the Directive might constitute State aid and in those cases have to be notified pursuant to Article 88(3) of the EC Treaty. That Article expressly states that information provided to the Commission on the basis of the Directive does not release Member States from the notification obligation pursuant to Article 88(3) of the EC Treaty.

(47) The same applies for the Directive 92/81/EEC, which states in its recitals (sixth recital) that Member States may apply on an optional basis certain (…) exemptions (…) where this does not give rise to distortions of competition. Its Article 8(2) states that the Member States may 'without prejudice to other Community provisions' apply total or partial tax exemptions or reductions. The Commission recalls, at this occasion, its competence on State aid issues originating directly from the EC Treaty. Any Community legislation can not possibly impair the Commission's competence in this field.

(48) Germany asserts that the tax refund is an implementation of a power granted to Member States by the above-mentioned Directives, to which the Commission responds that this is possible only subject to the above-mentioned conditions. Germany also argues that it is contradictory for the Commission, which after all proposed those Directives, to assert to Germany that there is a resultant danger to the common market. Firstly, Germany did not argue that according to the Commission's interpretation there was no possibility of actually applying the said Directives. The Commission does not, of course, rule out the possibility of there being cases which have been conceived on the basis of the Directives, but which at the same time satisfy the requirements of fair competition. The Commission would point out that the Directives only allow for favourable tax treatment at this stage of the approximation of the fiscal legislation. They do not prescribe it.

(49) Germany disputes that the competition-law aspects of the Directives in question take priority. However, it follows from the above-mentioned considerations that in any case — i.e. even if competition-law considerations do not take priority — aid such as the present tax refund must be examined on the basis of the relevant competition rules under the EC Treaty. The question of whether or not there is priority is, therefore, without significance ([14]).

(50) The scope for assessment and discretion accorded to the Commission by the EC Treaty as regards the application of the exemptions under Article 87(3) was not and could not be restricted by the Directives in question in any way.

(51) Point 3.5 of the Community guidelines reflects the principles of State aid policy and the Common Agricultural Policy. It states that unilateral State aid measures which are simply intended to improve the financial situation of producers but which in no way contribute to the development of the sector, and in particular aid which is granted solely on the basis of price, quantity, unit of production or unit of the means of production is considered to constitute operating aid which is incompatible with the common market.

(52) As already stated, the aid in question is not linked to investment likely to modernise the sector (e.g. through better heat insulation or investment to increase energy utilisation). On the contrary, necessary adjustments (such as the above-mentioned) are likely to be delayed by such subsidies. The sector therefore remains dependent on this aid. Development either does not occur at all or takes place only after a corresponding delay. Contrary to what some interested third parties argue, not only is there no incentive effect to undertake the necessary investment, but the existing incentive of high energy prices is reduced by the subsidies. The aid in question is therefore to be classified as operating aid in the sense referred to above.

(53) The new Community guidelines for State aid in the agriculture and forestry sector 2007-2013 ([15]) did not enter into force until 1 January 2007. Point 172 provides for retroactive applicability in respect of unlawful tax refunds granted under Directive 2003/96/EC, but only if the conditions of that Directive have been met and there has been no differentiation within the agricultural sector. The same would apply for unlawful tax refunds granted under Directive 92/81/EEC. Since the measure in question applies only in favour of certain agricultural undertakings, however, point 172 does not therefore constitute a basis which would allow the Commission to regard the present tax refunds as compatible with the common market.

(54) Germany intends to justify the compatibility of the aid under the environmental guidelines. The Commission has also considered the application of points 23 and 51 *et seq*. of the Community guidelines on State aid for environmental protection which in certain circumstances permit the granting of operating aid. The agriculture guidelines of 2000 refer in point 5.6.2 to these environmental guidelines.

(55) Point 23 of the environmental guidelines states that exemptions from or reductions in taxes the effects of which are conducive to environmental protection to the benefit of firms in particular categories in order to avoid placing them in a difficult competitive situation could be acceptable, provided that such exemptions are *necessary* to ensure the adoption or continued application of taxes to all products.

(56) The Commission reminds that following point 50 of the environmental guidelines the tax measures in question should make, in general, a significant contribution to protecting the environment. Care should be taken to ensure that the exemptions do not, by their very nature, undermine the general objectives pursued.

(57) On the basis of the documents (the study) it submitted subsequently, Germany demonstrated that, notwithstanding the increase in energy taxes, energy consumption had decreased continuously and energy efficiency had increased in both vegetable and flower cultivation in greenhouses.

(58) Consequently, the Commission assumes that the undertakings in question have recognised the need to take measures to bring about some improvement in respect of environmental protection.

(59) The environmental guidelines distinguish between, on the one hand, new taxes (point 51.1) and, on the other, existing taxes (points 51.2 and 52).

(60) The Mineral Oil Tax Law had been in force when it was amended on 16 August 2001 by the Law Amending the Mineral Oil Tax Law, which granted the tax refunds. Therefore, it is to be deemed to have 'existed' in the sense of point 51.2 or 52 of the environmental guidelines at the time of the introduction of the amending Law.

([14]) Case T184/97 BP Chemicals v Commission, [2000] ECR II-3145, paragraph 59 *et seq*.
([15]) OJ C 319, 27.12.2006, p. 1.

(61) Point 51.2 provides for the application of the provisions in point 51.1 if the following two conditions are satisfied at the same time: (a) the tax in question must have an appreciable positive impact in terms of environmental protection, and (b) the derogations for the firms concerned must have been decided on when the tax was adopted or have become necessary as a result of a significant change in economic conditions that placed the firms in a particularly difficult competitive situation. In the latter instance, the amount of the reduction may not exceed the increase in costs resulting from the change in economic conditions. Once there is no longer any increase in costs, the reduction must no longer apply.

(62) The conditions mentioned under (a) and (b) must be cumulatively fulfilled in order to apply point 51.1 of the environmental guidelines. As regards the conditions under (b) first alternative, which requires that the derogations for the firms concerned must have been decided on when the tax was adopted, the Commission observes that all the tax reductions have been granted after the adoption of the tax law and not at the time of the adoption. Therefore, the first alternative is not fulfilled. The second alternative requires not only the proof of a significant change in economic conditions of the firms concerned, on the one hand, but also the proof that the amount of reduction does not exceed the increase in costs resulting from the change in economic conditions, on the other. Germany has not provided evidence which would allow the Commission to consider these conditions fulfilled. Therefore, also the second alternative of (b) is not fulfilled. Consequently, point 51.2 can not be applied.

(63) The Commission has examined whether point 52 could be applied. Point 52 lays down that where an existing tax is increased significantly and where the Member State concerned takes the view that derogations are needed for certain firms, the conditions set out in point 51.1 as regards new taxes are applicable by analogy. Therefore it must be examined whether the taxes were increased significantly and if the conditions of point 51.1 of the environmental guidelines are fulfilled.

(64) The existing taxes were all increased by more than 20 % (see Annex I). The Commission considers this increase to be significant within the meaning of point 52 of the environmental guidelines. The Commission notes that, according to Germany, the tax reductions in question are necessary for the continued existence of the greenhouse undertakings which benefit from them.

(65) However, point 52 can be applied only to the granted tax reductions that do not exceed the increase in the original tax, that is to say the new part of the existing tax. Point 52 refers to the rules applicable to new taxes. As a consequence the increase of the tax is assessed by analogy in the same way as the introduction of a new tax. This analogy can only be applied for the new part, meaning the increased part of the tax. Only this reasoning ensures that the additional criteria which have to be applied in the assessment of existing taxes are not ignored in the case of the assessment of a tax increase. Based on this assumption the Commission has established the following facts:

(66) Regarding heating oil, the original tax had been increased from EUR 40,90/1 000 l to EUR 61,35/1 000 l. The Commission considers therefore that any reduction of the tax going beyond the original level (namely EUR 40,90/1 000 l), cannot be justified under the environmental guidelines and is therefore incompatible with the common market.

(67) Regarding natural gas, the original tax had been increased from EUR 1,87/MWh to EUR 3,476/MWh (as of 1 April 1999), and EUR 5,50/MWh (as of 2003). The Commission considers therefore that any reduction of the tax going beyond the original level (namely EUR 1,87/1 000 l), cannot be justified under the environmental guidelines and is therefore incompatible with the common market.

(68) Regarding the liquid gas, the original tax had been increased from EUR 25,56/1 000 kg to EUR 38,34/1 000 kg (as of 1 April 1999) and EUR 60,60/1 000 kg (as of 2003). The Commission considers therefore that any reduction of the tax going beyond the original level (namely EUR 25,56/1 000 kg), cannot be justified under the environmental guidelines and is therefore incompatible with the common market.

(69) With respect to the part of the aid which has not gone beyond the increase of the tax in 1999, the Commission has also determined whether the conditions of point 51.1(b) (applicable by analogy in accordance with point 52 of the guidelines) were respected.

(70) Point 51.1(b) states that exemption decisions covering a 10-year period with no degressivity may be justified in two cases and specifies two further conditions which must be met: (a) where the reduction concerns a Community tax, the amount effectively paid by the firms after the reduction must remain higher than the Community minimum in order to provide the firms with an incentive to improve environmental protection; (b) where the reduction concerns a domestic tax imposed in the absence of a Community tax, the firms eligible for the reduction must nevertheless pay a *significant* proportion of the national tax. Alternatively the environmental guidelines require that alternative measures (e.g. voluntary agreements) are in place, which is not the case here.

(71) With regard to the three products concerned, namely heating oil, natural gas and liquid gas, the original level of taxation applied before the increase of the tax in 1999 exceeded the Community minima:

For heating oil, the Community minimum tax rate was EUR 18,00/1 000 l [16] for the years 2001-2003 and EUR 21,00/1 000 l [17] for the years 2004-2006 and was therefore below the original level of taxation of EUR 40,90/1 000 l.

For natural gas, the Community minimum tax rate was EUR 0,54/MWh for the years 2004-2006 and was therefore below the original level of taxation of EUR 1,87/MWh.

For liquid gas, the Community minimum tax rate was EUR 0/1 000 kg and was therefore below the original level of taxation of EUR 25,56/1 000 kg.

(72) With regard to the (word missing) heating fuels which were *not* subject to a Community minimum during the years 2001-2003, point 51.1(b), second indent, of the 2001 Guidelines on State aid for environmental protection requires benefiting companies to pay a significant proportion of the national tax. The reason for that is to leave them with an incentive to improve their environmental performance. In the practice of the Commission, it has become clear that, in general 20 %, or the Community minimum that applies to energy uses that do fall within the scope of respective Directives can be regarded as a significant proportion.

(73) Even if one takes into account the highest national tax rate applicable in the period in question, namely EUR 5,5/MWh, in the year 2003, the 20 % threshold only amounts to EUR 1,1/MWh, and therefore remains under the original level of taxation, namely EUR 1,87/MWh.

(74) For these reasons, the Commission concludes that, as far as the tax reductions do not go beyond the original levels of taxation before the increase in 1999, the conditions set out in point 51.1 b are fulfilled.

(75) Regarding heating oil, the Commission considers therefore that the part of the reduction of the tax which goes beyond the original rate (namely EUR 40,90/1 000 l) is incompatible, and that the part of the reduction above the original rate (the reduction from EUR 61,35/1 000 l to EUR 40,90/1 000 l) is compatible with the common market.

(76) Regarding natural gas, the Commission considers therefore that the part of the reduction of the tax, which goes beyond the original rate (namely EUR 1,87/MWh) is incompatible, and that the part of the reduction above the original rate (the reduction from EUR 3,476/MWh for the years 2001 and 2002 and EUR 5,5/MWh for the years 2003 to 2006 to EUR 1,87/MWh) is compatible with the common market.

(77) Regarding liquid gas, the Commission considers therefore that the part of the reduction of the tax which goes beyond the original rate (namely EUR 25,56/1 000 kg) is incompatible, and that the part of the reduction above the original rate (the reduction from EUR 38,34/1 000 kg for the years 2001 and 2002 and EUR 60,60/1 000 kg for the years 2003 to 2006 to EUR) is compatible with the common market.

[16] Minimum rate of taxation referred to in Article 5(3) of Council Directive 92/82/EEC of 19 October 1992 on the approximation on the rates of excise duties on mineral oils.

[17] Minimum rate of taxation referred to in Article 4(1) in conjunction with Annex I Table C of Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity.

(78) The Commission notes that the aid granted in the years 2001-2004 was granted in breach of Article 93(2) of the EC Treaty (now Article 88(2)) without registering it in time with the Commission and without awaiting the Commission's Decision.

(79) Germany argues that the Commission knew about the aid as early as 29 August 2001, but that the Commission had not initiated proceedings under Article 88(2) of the EC Treaty until 22 October 2005. In Germany's opinion this decision is too late and with reference to Article 10(1) of Regulation (EC) No 659/1999 cannot be reconciled with the principles of proper administration. Germany therefore argues that the Commission is no longer authorised to establish the aid's incompatibility with the common market.

(80) Unlawful aid is not eligible for the short examination periods specified in Article 4 of Regulation (EC) No 659/1999. The principles of proper administration remain applicable, however. The Commission underlines nevertheless that it reserved its right to examine the aid under scrutiny in its Decision C(2002) 441 final of 13 February 2002 addressed to Germany.

(81) From the date cited by Germany (29 August 2001) until the opening of the formal investigation procedure (20 October 2005) the Commission addressed at least three requests for information to Germany and held a meeting with representatives from Germany. Also, it was not until during this period that the Commission learnt of the two extensions of the tax refund, by two years in each case. During the same period Germany addressed no less than five communications with additional information to the Commission. The mere fact that during the period in question Germany sent five communications to the Commission proves that it was also Germany's view that the information had not been sufficiently complete to allow the Commission to take a decision on this case. Citing the RSV judgment does not alter that fact. The case underlying that judgment is different. In that case, the Commission not only already had detailed knowledge of the aid (which is not so in the present case), but had even already taken a decision on the basic measure. Even taking into account the relevant ECJ case law, there is therefore no question of the Commission having failed to take action. Article 10(1) of Regulation (EC) No 659/1999 has not been infringed.

(82) Regarding the notified part of the aid (ex number N 189/2005) neither Germany nor interested third parties argued that there had been specific infringements of the examination periods as referred to in Article 4(5) of Regulation (EC) No 659/1999. Furthermore, Germany did not apply the procedure provided for under Article 5(3) of that Regulation.

(83) Therefore, the arguments of Germany concerning the concrete application of the Regulation (EC) No 659/1999 must be discarded.

(84) The Commission points out that, pursuant to Article 14(1) of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 [now Article 88] of the EC Treaty [18], any unlawful aid found to be incompatible with the common market granted under the scheme at issue must be recovered.

(85) Article 14(1) provides as follows: 'The Commission shall not require recovery of the aid if this would be contrary to a general principle of Community law.' The Commission is required to take into consideration on its own initiative exceptional circumstances that provide such justification [19].

(86) It should be examined whether, in this case, any general principle of Community law, such as the principle of legitimate expectations or of legal certainty, could be applied in order to preclude recovery from the beneficiaries of the unlawful and incompatible aid.

(87) The protection of legitimate expectations is a general principle protected under Community law. For legitimate expectations to arise, previous assurances provided by the Commission administration regarding the legality of a certain measure are required. Therefore, there must be an act or conduct on the part of the Community administration capable of having given rise to such an expectation [20].

[18] OJ L 83, 27.3.1999, p. 1.

[19] Case 223/85 Rijn-Schelde-Verolme (RSV) Machinefabrieken en Scheepswerven NV v. Commission, [1987] ECR 4617.

[20] Case C-265/85 Van den Bergh en Jurgens v Commission, [1987] ECR 1155, paragraph 44; case C-152/88 Sofrimport v Commission, [1990] ECR I-2477, paragraph 26; case T-290/97 Mehibas Dordtselaan v Commission, [2000] ECR II-15, paragraph 59; case T-223/00 Kyowa Hakko Kogyo v. Commission, [2003] ECR II-2553, paragraph 51.

(88) According to the case-law, the principle of legal certainty is breached when the circumstances of uncertainty and lack of clarity led to the creation of an equivocal situation which the Commission should have clarified before it could take any action to order recover ([21]).

(89) Germany has not specifically demonstrated why recovery in itself should not be compatible with proper administration. Under Article 14 of Council Regulation (EC) No 659/1999 of 22 March 1999, aid deemed to be unlawful and incompatible with the common market must be recovered as a matter of principle.

(90) The only exception to that are cases in which recovery would infringe general principles of Community law. No such infringement is apparent. Furthermore, and in particular, any legitimate expectation on the part of Germany was neither well founded nor worthy of protection. It was not well founded because the aid had not been notified. Germany could not therefore have legitimate expectations in the existence of that aid. This applies all the more so because by the above-mentioned letter of 13 February 2002 the Commission drew Germany's attention to the possibility that the aid might be checked. According to established ECJ case law, a prudent businessman could and should have asked the German authorities whether the aid had been notified and could have therefore found out that there was a risk of possible demand for recovery ([22]). If he deliberately or as a result of negligence failed to ask this, his legitimate expectations are not worthy of protection.

(91) In response to Germany's objection that, as a result of verbal statements by Commission officials, Germany gained the impression that the aid was compatible with the common market, the Commission points out that it alone, under the responsibility of the College, is authorised to take such decisions. It also notes that there is no Commission document from which it could be concluded that the aid in question is compatible with the common market.

(92) In response to the objection that in the event of possible recovery a large number of undertakings would be threatened with insolvency, the Commission reiterates that recovery of part of the aid is necessary in order to enable restoration of the status quo ante, i.e. a situation without distorted competition. If this means that individual undertakings are not viable, then that is only a result of competition taking place under market-economy conditions.

([21]) Case T-308/00 Salzgitter AG v Commission, not yet reported in the ECR, paragraph 180.

([22]) Deufil Gmbh & Co. KG v Commission [1987] ECR 901.

(93) From the considerations formulated in this decision it is clear that the recovery of the subsidies in question can not possibly be waived on grounds of legal certainty.

(94) The tax refunds granted must, in principle, be recovered in full where they have been deemed to constitute aid which is incompatible with the common market.

(95) The decision concerns the tax refund in question and must, including recovery, be effected without delay in accordance with Article 14 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty.

(96) Under Article 14(1) of Council Regulation (EC) No 659/1999, where negative decisions are taken in cases of unlawful aid, the Commission is to decide that the Member State concerned must take all necessary measures to recover the aid from the beneficiary. Germany must therefore take all necessary measures to recover from the beneficiaries the incompatible aid granted. Germany must call upon the beneficiaries concerned to pay back the aid within two months following publication of this decision. The aid to be recovered includes interest, calculated in accordance with Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999.

(97) Nevertheless, any individual aid granted under this scheme which satisfies, at the time of grant, the conditions laid down by the Commission Regulations adopted on the basis of Council Regulation (EC) No 994/98 or by any other approved aid scheme is compatible with the common market to the amount of the admissible intensities.

(98) Furthermore, the Commission's experience has shown that very small amounts of aid granted subject to certain conditions do not fall under Article 87(1) of the Treaty.

(99) Under Regulation (EC) No 1860/2004 ([23]), aid not exceeding EUR 3 000 per beneficiary over three years (this amount including the '*de minimis*' aid granted to any one enterprise) does not affect trade between Member States and does not distort or threaten to distort competition and therefore does not fall under Article 87(1) of the Treaty.

(100) Under Article 5 of Regulation (EC) No 1860/2004 the same applies to aid granted before its entry into force, provided that the requirements of Articles 1 and 3 thereof are fulfilled.

(101) On 1 January 2008, Regulation (EC) No 1860/2004 has been replaced by Regulation (EC) No 1535/2007 of 20 December 2007 on the application of Articles 87 and 88 of the EC Treaty to the *de minimis* aid in the sector of agricultural production ([24]), which increases the amount of *de minimis* aid to EUR 7 500 per beneficiary over any period of three fiscal years, irrespective of the form of the aid or the objective pursued, within the limits of a maximum amount per Member State corresponding to 0,6 % of the value of the annual production.

(102) Article 6(1) of that Regulation states that 'this Regulation shall apply to aid granted before 1 January 2008 to undertakings in the sector of agricultural production, provided that such aid fulfils all the conditions laid down in Articles 1 to 4, except for the reference requirement clearly set out in this Regulation in the first subparagraph of Article 4(1)'.

(103) Article 6(2) of the same Regulation states that 'any *de minimis* aid granted between 1 January 2005 and six months after entry into force of this Regulation, which fulfils the conditions of Regulation (EC) No 1860/2004 applicable to the sector of agricultural production until the date of entry into force of this Regulation, shall be deemed not to meet all the criteria of Article 87(1) of the Treaty and shall therefore be exempt from the notification requirement of Article 88(3) of the Treaty'.

(104) Against this background, the Commission considers that a tax reduction up to a maximum amount of EUR 3 000 would not constitute State aid if it complied with the provisions of Regulation (EC) No 1860/2004 at the time it was granted, and that a tax reduction up to the maximum amount of EUR 7 500 would not constitute State aid if it complied with the provisions of Regulation (EC) No 1535/2007 at the time it was granted.

## VI. **CONCLUSIONS**

(105) The State aid granted to agricultural and forestry undertakings for heating greenhouses or covered areas for crop production under the *Law amending the Mineral Oil Tax Law* and the *Law on the further development of the ecological tax reform*, unlawfully put into effect by the Federal Republic of Germany in breach of Article 88(3) of the Treaty, or which it intends to grant to them under the Guidelines Implementation Law, is hereby deemed to be incompatible with the common market to the extent mentioned in points 75 to 77 of the present decision, and must be recovered for the relevant period, where granted.

(106) In all other respects, the State aid which the Federal Republic of Germany has granted to agricultural and forestry undertakings for heating greenhouses or covered areas for crop production under the *Law amending the Mineral Oil Tax Law* and the *Law on the further development of the ecological tax reform* or which it intends to grant to them under the Guidelines Implementation Law, is hereby deemed to be compatible with the common market,

HAS ADOPTED THIS DECISION:

*Article 1*

The State aid scheme applied or intended to be applied by Germany to agricultural and forestry undertakings for heating greenhouses or covered areas for crop production under the *Law amending the Mineral Oil Tax Law*, the *Law on the further development of the ecological tax reform* and the *Guidelines Implementation Law* is incompatible with the common market with respect to the part of the reduction of the tax, which goes beyond the original rate of EUR 40,90/1 000 l for heating fuel, of EUR 1,87/MWh for natural gas, and of EUR 25,56/1 000 kg for liquid fuel.

([23]) OJ L 325, 28.10.2004, p. 4.
([24]) OJ L 337, 21.12.2007, p. 35.

*Article 2*

The State aid scheme applied or intended to be applied by Germany to agricultural and forestry undertakings for heating greenhouses or covered areas for crop production under the *Law amending the Mineral Oil Tax Law*, the *Law on the further development of the ecological tax reform* and the *Guidelines Implementation Law* is compatible with the common market in all other respects.

*Article 3*

Germany shall withdraw the part of the scheme referred to in Article 1.

*Article 4*

1. Germany shall take all necessary measures to recover from the beneficiaries the aid referred to in Article 1.

2. The aid to be recovered shall include interest from the date on which the aid became available to the beneficiaries until the date on which it is actually recovered.

Interest shall be calculated in accordance with Chapter V of Commission Regulation (EC) No 794/2004.

3. Germany shall cancel all payment of outstanding aid referred to in Article 1 with effect from the date of the present decision.

4. Recovery shall be effected without delay and in accordance with the procedures of national law, provided these allow the immediate and effective execution of this Decision.

5. Germany shall ensure that this Decision is implemented within four months of the date of its notification.

*Article 5*

1. Germany shall keep the Commission informed of the progress of the national proceedings to implement this Decision until those proceedings have been completed.

2. Within two months from notification of this Decision, Germany shall submit the following information:

(a) the list of beneficiaries that have received aid under the scheme referred to in Article 1 and the total amount of aid received by each of them under the scheme;

(b) the total amount (principal and recovery interest) to be recovered from each beneficiary;

(c) a detailed description of the measures already taken and planned to comply with this Decision;

(d) documents demonstrating that the beneficiaries have been ordered to repay the aid.

3. Within two months following notification of this Decision, Germany shall at the request of the Commission submit a report detailing the measures taken or planned to comply with this Decision. That report shall also provide detailed information on the amounts of aid and recovery interest already repaid by each beneficiary.

*Article 6*

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 11 March 2008.

*For the Commission*

Mariann FISCHER BOEL

*Member of the Commission*

*ANNEX I*

**ENERGY TAXATION**

**Heating oil**

| Year | Standard rate of taxation | Reduction pursuant to s. 25(3a) first sentence, No 1,2 in conjunction with s. 25(4) of the Mineral Oil Tax Law *since 1 August 2006*: s. 54(2)(1) in conjunction with s. 54(3) of the Energy Taxation Law | Reduction pursuant to s. 25(3a) first sentence, No 1,4 of the Mineral Oil Tax Law *since 1 August 2006*: s. 58(2)(1) of the Energy Taxation Law C 39/2005 | Net taxation | EU minimum tax |
|---|---|---|---|---|---|
| | in EUR/1 000 l | | | | |
| until 31.3.1999 | 40,90 (1) | | | | |
| as of 1.4.1999 | 61,35 (2) | | | | |
| 2000 | 61,35 (2) | | | | |
| 2001 | 61,35 (2) | 16,36 | 40,90 | 4,09 (3) | 18,00 (5) |
| 2002 | 61,35 | 16,36 | 40,90 | 4,09 (3) | 18,00 (5) |
| 2003 | 61,35 | 8,18 | 40,90 | 12,27 (4) | 18,00 (5) |
| 2004 | 61,35 | 8,18 | 40,90 | 12,27 (4) | 21,00 (6) |
| 2005 | 61,35 | 8,18 | 40,90 | 12,27 (4) | 21,00 (6) |
| 2006 | 61,35 | 8,18 | 40,90 | 12,27 (4) | 21,00 (6) |

(1) Until 31 March 1999, the standard rate of taxation on heating oil (HEL) was DM 80,00/1 000 litres. Figures have been provided in euro to facilitate comparison (exchange rate: EUR 1 = DM 1,95583).

(2) As of 1 April 1999, the standard rate of taxation on heating oil (HEL) was DM 120,00/1 000 litres. Figures have been provided in euro to facilitate comparison (exchange rate: EUR 1 = DM 1,95583).

(3) For the sake of simplicity, the net taxation figure does not take account of the tax 'floor' (deductible) of EUR 409 provided for by s. 25(4) of the Mineral Oil Tax Law. The actual net taxation figure depends on the amount consumed.

(4) For the sake of simplicity, the net taxation figure does not take account of the tax 'floor' (deductible) of EUR 205 provided for by s. 25(4) of the Mineral Oil Tax Law (as of 1 August 2006: s. 54(3) of the Energy Tax Law). The actual net taxation figure depends on the amount consumed.

(5) Minimum rate of taxation referred to in Article 5(3) of Council Directive 92/82/EEC of 19 October 1992 on the approximation of the rates of excise duties on mineral oils.

(6) Minimum rate of taxation referred to in Article 4(1) in conjunction with Annex I Table C of Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity.

**Natural gas**

| Year | Standard rate of taxation | Reduction pursuant to s. 25(3a) first sentence, No 3,2 in conjunction with s. 25(4) of the Mineral Oil Tax Law *since 1 August 2006*: s. 54(2)(2) in conjunction with s. 54(3) of the Energy Taxation Law | Reduction pursuant to s. 25(3a) first sentence, No 3,4 of the Mineral Oil Tax Law *since 1 August 2006*: s. 58(2)(2) of the Energy Taxation Law C 39/2005 | Net taxation | EU minimum tax |
|---|---|---|---|---|---|
| | in EUR/MWh | | | | |
| until 31.3.1999 | 1,87 (1) | | | | |
| as of 1.4.1999 | 3,476 (2) | | | | |
| 2000 | 3,476 (2) | | | | |
| 2001 | 3,476 (2) | 1,308 | 1,84 (3) | 0,328 (4) | not harmonised |
| 2002 | 3,476 | 1,308 | 1,84 (3) | 0,328 (4) | not harmonised |
| 2003 | 5,50 | 1,464 | 3,00 | 1,036 (5) | not harmonised |
| 2004 | 5,50 | 1,464 | 3,00 | 1,036 (5) | 0,54 (6) (7) |
| 2005 | 5,50 | 1,464 | 3,00 | 1,036 (5) | 0,54 (6) (7) |
| 2006 | 5,50 | 1,464 | 3,00 | 1,036 (5) | 0,54 (6) (7) |

(1) Until 31 March 1999, the standard rate of taxation on natural gas was DM 3,60/MWh. Figures have been provided in euro to facilitate comparison (exchange rate: EUR 1 = DM 1,95583).
(2) From 1 April 1999 until 31 December 2001, the standard rate of taxation on natural gas was DM 6,80/MWh. Figures have been provided in euro to facilitate comparison (exchange rate: EUR 1 = DM 1,95583).
(3) Amount of tax reduction pursuant to s. 25(3a)(3.4) of the Mineral Oil Tax Law of 1 August 2002 (Federal Law Gazette Part I, p. 2778).
(4) For the sake of simplicity, the net taxation figure does not take account of the tax 'floor' (deductible) of EUR 409 provided for by s. 25(4) of the Mineral Oil Tax Law. The actual net taxation figure depends on the amount consumed.
(5) For the sake of simplicity, the net taxation figure does not take account of the tax 'floor' (deductible) of EUR 205 provided for by s. 25(4) of the Mineral Oil Tax Law. The actual net taxation figure depends on the amount consumed.
(6) Minimum rate of taxation referred to in Article 4(1) in conjunction with Annex I Table C of Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity.
(7) Converted into MWh (Table C: 0,15/0,30 euro/gigajoule based on gross calorific value).

**Liquid gas**

| Year | Standard rate of taxation | Reduction pursuant to s. 25(3a) first sentence, No 4,2 in conjunction with s. 25(4) of the Mineral Oil Tax Law *since 1 August 2006*: s. 54(2)(3) in conjunction with s. 54(3) of the Energy Taxation Law | Reduction pursuant to s. 25(3a) first sentence, No 4,4 of the Mineral Oil Tax Law *since 1 August 2006*: s. 58(2)(3) of the Energy Taxation Law C 39/2005 | Net taxation | EU minimum tax |
|---|---|---|---|---|---|
| | in EUR/1 000 kg | | | | |
| until 31.3.1999 | 25,56 (1) | | | | |
| as of 1.4.1999 | 38,34 (2) | | | | |
| 2000 | 38,34 (2) | | | | |
| 2001 | 38,34 (2) | 10,22 | 25,56 | 2,56 (3) | 0,00 (5) |
| 2002 | 38,34 | 10,22 | 25,56 | 2,56 (3) | 0,00 (5) |
| 2003 | 60,60 | 14,02 | 38,90 | 7,68 (4) | 0,00 (5) |
| 2004 | 60,60 | 14,02 | 38,90 | 7,68 (4) | 0,00 (6) |
| 2005 | 60,60 | 14,02 | 38,90 | 7,68 (4) | 0,00 (6) |
| 2006 | 60,60 | 14,02 | 38,90 | 7,68 (4) | 0,00 (6) |

(1) Until 31 March 1999, the standard rate of taxation on liquid gas was DM 50,00/1 000 kg. Figures have been provided in euro to facilitate comparison (exchange rate: EUR 1 = DM 1,95583).

(2) From 1 April 1999 until 31 December 2001, the standard rate of taxation on liquid gas was DM 75,00/1 000 kg. Figures have been provided in euro to facilitate comparison (exchange rate: EUR 1 = DM 1,95583).

(3) For the sake of simplicity, the net taxation figure does not take account of the tax 'floor' (deductible) of EUR 409 provided for by s. 25(4) of the Mineral Oil Tax Law. The actual net taxation figure depends on the amount consumed.

(4) For the sake of simplicity, the net taxation figure does not take account of the tax 'floor' (deductible) of EUR 205 provided for by s. 25(4) of the Mineral Oil Tax Law. The actual net taxation figure depends on the amount consumed.

(5) Minimum rate of taxation referred to in Article 6(3) of Council Directive 92/82/EEC of 19 October 1992 on the approximation of the rates of excise duties on mineral oils.

(6) Minimum rate of taxation referred to in Article 4(1) in conjunction with Annex I Table C of Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity.

*ANNEX II*

**Information about the amounts of aid received, to be recovered and already recovered**

| Identity of the beneficiary | Total amount of aid received under the scheme (°) | Total amount of aid to be recovered (°) (principal) | Total amount of aid already recovered (°) | |
|---|---|---|---|---|
| | | | Principal | Recovery interest |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |

(°) National currency in millions.