COUNCIL IMPLEMENTING DECISION

of 18 January 2011

authorising France to apply differentiated levels of taxation to motor fuels in accordance with Article 19 of Directive 2003/96/EC

(2011/38/EU)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity [1], and in particular Article 19 thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) Council Decision 2005/767/EC [2] authorises France to apply, for a period of 3 years, differentiated levels of taxation to gas oil and unleaded petrol. France had requested the authorisation in the context of an administrative reform involving the decentralisation of certain specific powers previously exercised by central government. Decision 2005/767/EC expired on 31 December 2009.

(2) By letter dated 12 August 2009, France requested authorisation to continue to apply differentiated rates of taxation under the same conditions for a further 6 years after 31 December 2009.

(3) Decision 2005/767/EC was adopted on the basis that the measure requested by France met the requirements set out in Article 19 of Directive 2003/96/EC. In particular, it was considered that that measure would not hinder the proper functioning of the internal market. It was also considered that it was in conformity with the relevant Community policies.

(4) The national measure is part of a policy designed to increase administrative effectiveness by improving the quality and reducing the cost of public services, as well as a policy of subsidiarity. It offers regions an additional incentive to improve the quality of their administration in a transparent fashion. In this respect, Decision 2005/767/EC requires that the reductions be linked to the socioeconomic circumstances of the regions in which they are applied. Overall, the national measure is based on specific policy considerations.

(5) The tight limits set for the differentiation of rates on a regional basis as well as the exclusion of gas oil used for commercial purposes from the measure imply that the risk of competitive distortions in the internal market is very low. Moreover, the application of the measure so far has shown a strong tendency on behalf of regions to levy the maximum rate allowable, which has further decreased any potential for competitive distortions.

(6) No obstacles to the proper functioning of the internal market have been reported as regards, more particularly, the circulation of the products in question in their capacity as products subject to excise duty.

(7) When originally requested, the national measure had been preceded by a tax increase equal to the margin for regional reductions. Against this background and in light of the conditions of the authorisation as well as experience gathered, the national measure does not, at this stage, appear to be in conflict with Union energy and climate policies.

(8) It follows from Article 19(2) of Directive 2003/96/EC that each authorisation granted under that Article must be strictly limited in time. Due to the possible future developments of the Union framework on energy taxation, this authorisation should be limited to a period of 3 years. It is furthermore appropriate to avoid any time gap with respect to the application of the authorisation,

HAS ADOPTED THIS DECISION:

Article 1

1. France is hereby authorised to apply reduced rates of taxation to unleaded petrol and gas oil used as fuel. Gas oil for commercial use within the meaning of Article 7(2) of Directive 2003/96/EC shall not be eligible for any such reductions.

2. Administrative regions may be permitted to apply differentiated reductions provided the following conditions are fulfilled:

(a) the reductions are no greater than EUR 35,4 per 1 000 litres of unleaded petrol or EUR 23,0 per 1 000 litres of gas oil;

[1] OJ L 283, 31.10.2003, p. 51.
[2] OJ L 290, 4.11.2005, p. 25.

(b) the reductions are no greater than the difference between the levels of taxation of gas oil for non-commercial use and gas oil for commercial use;

(c) the reductions are linked to the objective socio-economic conditions of the regions in which they are applied;

(d) the application of regional reductions does not have the effect of granting a region a competitive advantage in intra-Union trade.

3. The reduced rates must comply with the requirements of Directive 2003/96/EC, and in particular the minimum rates laid down in Article 7.

Article 2

This Decision shall take effect on the day of its notification.

It shall apply from 1 January 2010.

It shall expire on 31 December 2012.

Article 3

This Decision is addressed to the French Republic.

Done at Brussels, 18 January 2011.

For the Council
The President
Gy. MATOLCSY