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THE NEW EUROPEAN COMMISSION PROPOSAL ON COMMERCIAL FUEL DUTY

Overview of the new Commission proposal for amending Council Directive 2003/96 concerning commercial diesel fuel taxes.

I. BACKGROUND

On the 13 March 2007 the European Commission adopted a new proposal for a Council Directive concerning taxation of diesel fuel used for commercial purposes. The proposal can be downloaded from the Internet in PDF format by clicking on the following link: [http://ec.europa.eu/taxation_customs/resources/documents/taxation/excise_duties/energy_products/COM\(2007\)52_en.pdf](http://ec.europa.eu/taxation_customs/resources/documents/taxation/excise_duties/energy_products/COM(2007)52_en.pdf).

1. Origin of the Proposal

The origin of this proposal can be traced back to the 2001 Transport White Paper in which the Commission set out its goal of removing distortions of competition within the internal road transport market that were the result of differing levels of fuel duty. It also follows the withdrawal in 2005 of an earlier draft proposal (COM(2002)462) which intended to establish a single harmonised rate for professional fuel duty at EUR400 per 1000 litres. That proposal was withdrawn due to insurmountable opposition in Council and the adoption of negative consultative opinions by the European Parliament.

The re-launch of an initiative in this area can be seen in the light of the Mid Term review of the 2001 Transport White Paper and a willingness on the part of the current German Presidency of the EU to re-open the debate on distortions of competition between Member States based on their fuel duty levels. However, an environmental objective – the lowering of road transport CO₂ emissions through a decrease in so called tank tourism - has now been added to the original internal market rationale for a proposal.

2. Consultation

In July 2006, a stakeholder consultation was launched detailing various policy options to reduce or remove altogether excessive differences between EU Member State diesel fuel duties. Three main policy options were considered in the consultation:

- (a) To do nothing and rely on Member States to align their fuel duties.
- (b) Introduce by 2018 a single EU professional fuel duty rate of EUR 400 per 1000 litres.
- (c) Introduce an EU fluctuation band set around a central fuel duty rate and with minimum and maximum rates of fuel duty. The fluctuation band would be progressively reduced to a width of EUR 100 by 2010.

The IRU responded to this consultation by stating that none of the three policy options presented by the Commission could be supported. Bearing in mind the 2004 IRU declaration 'On the current Fuel Crisis', the IRU instead called for a single EU fuel duty rate applicable to all commercial trucks, busses, coaches over 3.5 tonnes and also taxis, at a rate below EUR 350 per 1000 litres.

II. ANALYSIS OF THE NEW PROPOSAL

1. Objectives and justifications

As outlined above the new proposal has two stated objectives: to narrow fuel tax related distortions of competition and to eliminate so called 'tank tourism' which causes environmental damage through unnecessary CO2 emissions.

Concerning distortions of competition the Commission argues that international transport undertakings or those who are located near to a border where cheaper fuel can be bought enjoy a competitive advantage over operators without this possibility. The proposal argues that since total fuel costs represent between 20 and 30% of operating costs and that excise duty equates to between 30 and 60% of pump prices the ability for some undertakings to tank more cheaply can have significant consequences for national market shares. It cites a study carried out by the French Ministry of Transport which noted important changes in market shares on the European Transport market between 1997 and 2001 of which 40% appear to have a basis in fuel tax differences.

The Commission proposal then elaborates a second negative consequence arising from differences in fuel taxation namely tank tourism whereby operators are responsible for wasteful fuel consumption and CO2 emissions through route detours to tank in countries with low fuel taxes. It cites a 2003 study by Michaelis which contended that Germans were willing to drive 2 to 4 additional kilometres for each EURO cent price differential in fuel price.

Finally the Commission argues that tank tourism results in budgetary losses for high taxing Members States. It estimates that in 2004 the German Government lost in the order EUR 1.915 billion in fuel tax revenue due to a displacement of fuel sales to countries with lower taxation.

2. Proposed Legislative Changes

The Commission proposal aims to achieve its objectives by amending the Energy Taxation Directive (2003/96/EC) and establishing the following core principles:

Increase the minimum EU level for diesel to EUR359 per 1000 litres by 2012 and subsequently to EUR 380 in 2014. This will bring it in line with the minimum levels for taxation of unleaded petrol. (See below for new derogations)

- Allow member States to differentiate between commercial and non-commercial diesel tax rates as long as the new minimum levels are respected and the level of taxation for commercial fuel does not fall below the level of taxation in January 2003. (No change)
- Require that national levels of taxation for unleaded petrol and non-commercial diesel (if a Member State chooses to decouple) do not fall below the level applied to commercial diesel.
- 'Member States which apply or introduce a system of road user charges to motor vehicles using commercial gas oil (diesel)...may apply a reduced rate to such gas oil that goes below the national level of taxation in force on the 1 January 2003 as long as the overall tax burden remains broadly equivalent and provided that the Community minimum level applicable to gas oil is observed.' (Deletion of requirement to be twice as high as the 1 January 2004 level of taxation in order to reduce below level of 1 January 2003).

- Where Member States decouple commercial and non commercial diesel fuel taxation, a non-discriminatory, transparent and administratively simple refund mechanism must be established and made available to all EU operators.
- Certain Member States have been granted derogations delaying the introduction of the new minimum levels.

Member State	Deadline for Compliance with the new Minimum Levels			
	<i>EUR 302 per 1000 litres</i>	<i>EUR 330 per 1000 litres</i>	<i>EUR 359 per 1000 litres</i>	<i>EUR 380 per 1000 litres</i>
Spain, Austria and Belgium	2007	2012	2014	2016
Luxembourg, Portugal and Greece	2009	2012	2014	2016
Poland	2010	2012	2014	2016
Latvia and Lithuania	2011	2013	2015	2017
Bulgaria and Romania		2013	2015	2017

3. IRU Observations

- **Objectives and justification:** On the question of eliminating tank tourism the Commission has greatly overestimated the importance of this phenomenon, placing it as a core objective of the proposal. No comprehensive EU study exists to confirm let alone quantify the extent of this practice. Instead the Commission cites single country studies such as the Michaelis report and neglects to inform whether the figures provided on tank tourism and willingness to drive extra kilometres are specific for commercial road transport or also includes private vehicles. For commercial traffic factors such as delivery or passenger schedules, working and driving time rules and high labour costs would make tank tourism of the magnitude suggested in the Commission proposal almost impossible.

A similar flaw is evident in the Commission's use of figures to demonstrate a EUR 1.9 billion loss in fiscal revenue to the German Government due to tank tourism. These figures can not be usefully included as a support to the Commission proposal until the Commission provides firm figures on the volume and cost that tank tourism carried out by commercial traffic alone causes.

The IRU appreciates the Commission's attempt to tackle fuel taxation in Europe but is not convinced it has either the right rationale behind its proposal or the right strategy to remove competitive distortions between operators resulting from fuel taxation. Clearly fuel taxation plays a significant role in distortions of competition between different operators in the EU but it fails to translate this into a sound strategy for dealing with them.

- **Proposed Measures:** The current proposal will not remove distortions of competition resulting from variations in fuel duty between member states. The Commission argues on page 11 of its explanatory memorandum that by 2014 all but two Member States (i.e. the UK and Germany)

will have fuel duty rates between EUR 380 and EUR 420 per 1000L. However, national derogations outlined in the same Commission proposal indicate that in fact 12 Member States will be outside this tax bracket in 2014 (See table in annex 2). Furthermore, the Achilles heel in the Commission's entire alignment strategy is the absence of any upper tax limit for Member States to respect. The Commission's belief in alignment presupposes that higher taxing Member States will keep their fuel duty rates static. In fact raising fuel taxes in currently low taxing countries will only serve as an incentive for higher taxing countries to raise them higher as the competitive disadvantage of doing so recedes. It is very likely that distortions will reemerge only now at a higher level. Due to the absence of an upper taxation limit, the proposal includes all the disadvantages of requiring 21 Member States to raise fuel tax prices to a minimum of EUR 380 per 1000L – well above the IRU recommended level of below EUR 350 per 1000L – without any of the positive harmonisation benefits.

Concerning, the possibility to decouple commercial from non-commercial fuel duty the IRU welcomes the simplifications outlined in the new proposal. However, the scope for such reductions is still extremely narrow. The new higher minimum levels will leave very little room for a meaningful differential unless Member States wish to push up unleaded and non-commercial diesel taxes much higher than commercial diesel. Moreover the ability to lower fuel duty below the level in force on the 1 January 2003 if road user charges are adopted will still only be a meaningful option for Germany and the UK and to a much lesser extent France and Italy since EUR 380 per 1000 litres will still have to be respected. Finally the range of vehicles for which a professional fuel duty rate will be available will remain limited to vehicles above 7.5 tonnes for freight vehicles or for category M2 and M3 passenger vehicles. All individual exemptions granted to Member States – as outlined in annex 1 – concerning a wider or narrower scope of vehicles eligible as for a reduced rate will have expired by 2012.

III. IRU POSITION

On 5 November 2004, the IRU's General Assembly adopted an '[IRU Declaration on the current fuel crisis](#)' containing the following position:

'The recent European Commission Proposal [2002(462)] to harmonise taxes on professional fuel in Europe should be relaunched, but with the clear objective of reducing tax on such fuel to one standard rate, applicable in all 25 EU Member States. This standard rate must be clearly below the basic rate (EUR 350 per 1'000 litres) indicated in the Commission Proposal'.

In addition to this, the IRU position paper [CDLS/B2114](#) stipulates that a single rate for professional diesel should be extended to all commercial vehicles above 3.5 tonnes as well as taxis and hire cars with driver.

IV. ACTION

- The IRU Secretariat will take contact with the EU Institutions, advocating this position.
- IRU members should contact their national authorities to ask their support for the IRU position prior to discussions in the Council (ECOFIN). Members are also requested to contact their national MEPs prior to the European Parliament giving a consultative opinion.

The Existing Legal Framework

The existing legal framework as set by the Energy Tax Directive (2003/096/EC) clearly demonstrates the need for a thorough rationalisation. The Directive established a minimum EU level tax rate on diesel fuel of EUR 302 per 1000 litres by 1 January 2004, which would be raised to EUR 330 by 1 January 2010.

However, the Directive also agreed a number of **transitional derogations** for individual Member States:

- Spain, Austria and Belgium would only be required to reach the minimum fuel duty rate of EUR 302 per 1000 litres by 1 January 2007 and EUR 330 per 1000 litres by 2012.
- Luxembourg, Portugal and Greece would only be required to reach the minimum fuel duty rate of EUR 302 per 1000 litres by 1 January 2009 and EUR 330 per 1000 litres by 2012.

Additional derogations concerning diesel taxation were awarded to six of the **New Member States** which joined the EU in 2004 (Directives 2004/74/EC & 2004/75/EC):

- Cyprus, Estonia and Malta were given until 1 January 2010 to reach the minimum fuel duty rate of EUR 330 per 1000 litres.
- Poland would only be required to reach the minimum fuel duty rate of EUR 302 per 1000 litres by 1 January 2010 and EUR 330 per 1000 litres by 2012.
- Latvia and Lithuania would only be required to reach the minimum fuel duty rate of EUR 302 per 1000 litres by 1 January 2011 and EUR 330 per 1000 litres by 2013.

The Energy Taxation Directive (ETD) also allows Member States to create a **special reduced level of taxation for commercial diesel** on condition that: the ETD's minimum levels are observed and that the rate of commercial duty does not fall below the national level in force on 1 January 2003.

Moreover, Member States may in theory reduce rates for commercial duty below the level in force on 1 January 2003 if – as above – the ETD's minimum rates are respected, road user charges are introduced, the overall fiscal burden remains the same and that the Member State's tax level on 1 January 2004 was at least twice the minimum level established in the Energy Tax Directive. Consequently it is a possibility available only to the United Kingdom.

Article 7.3 of the ETD restricts the possibilities for offering a special rate of commercial fuel duty to vehicles in goods transport over 7.5 tonnes or category M2 and M3 vehicles in passenger transport. Once again there are a number of derogations in force. Spain, Portugal and Greece may make a commercial diesel rate available to taxis until 1 January 2012 and to all commercial vehicles over 3.5 tonnes until 1 January 2008. The Netherlands and Germany are permitted to restrict a commercial diesel rate to vehicles over 12 tonnes and Italy can make this rate available to taxis until 2008. No similar derogations were made available to the Member States which joined the EU since 2004.

Evolution of Minimum Diesel Fuel Duty Rates as envisaged by the EC Proposal

	Diesel duty in Euros per 1000 litres*					
	Member State	Rate on the 1 July 2006	EUR 302	EUR 330	EUR 359	EUR 380
Deadlines for reaching new minimum levels for fuel duty	Germany	470	Reached	Reached	Reached	Reached
	Denmark	404	Reached	Reached	Reached	Reached
	France	392	Reached	Reached	Reached	Reached
	Italy	403	Reached	Reached	Reached	Reached
	Sweden	394	Reached	Reached	Reached	Reached
	United Kingdom	693	Reached	Reached	Reached	Reached
	Netherlands	365	Reached	Reached	Reached	2014
	Slovakia	373	Reached	Reached	Reached	2014
	Ireland	368	Reached	Reached	Reached	2014
	Czech Republic	336	Reached	Reached	2012	2014
	Hungary	339	Reached	Reached	2012	2014
	Malta	332	Reached	Reached	2012	2014
	Portugal	339	Reached	Reached	2014	2016
	Austria	325	Reached	2012	2014	2016
	Belgium	305	Reached	2012	2014	2016
	Finland	319	Reached	2010	2012	2014
	Slovenia	303	Reached	2010	2012	2014
	Cyprus	250		2010	2012	2014
	Estonia	245		2010	2012	2014
	Romania	260		2013	2012	2014
	Spain	294	2007	2012	2014	2016
	Greece	260	2009	2012	2014	2016
	Luxembourg	278	2009	2012	2014	2016
	Poland	303	2010	2012	2014	2016
Bulgaria	220		2013	2015	2017	
Lithuania	245	2011	2013	2015	2017	
Latvia	236	2011	2013	2015	2017	

* Low sulphur diesel