



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 18.03.2002  
COM(2002) 144 final

Proposal for a

**COUNCIL DECISION**

**authorising the United Kingdom to apply a differentiated rate of excise duty to fuels containing biodiesel in accordance with Article 8(4) of Directive 92/81/EEC**

(presented by the Commission)

## EXPLANATORY MEMORANDUM

### 1. SUBMISSION OF REQUEST

- 1.1. By letter of 15 June 2001, the British authorities applied to the Commission for a derogation allowing them to apply a tax differentiation on biodiesel in accordance with Article 8(4) of Directive 92/81/EEC.<sup>1</sup>

In order to obtain the information it required to evaluate the request, the Commission sent additional questions by letters dated 12 July and 16 October 2001 to which the British authorities replied on 6 September, 5 October 2001 and 26 November 2001. A meeting was held between Commission representatives (DGs COMP and TAXUD) and the British authorities on 17 September 2001. The Commission on 17 December 2001 raised further questions. A letter from the British authorities on 9 January 2002 enabled the Commission to finalise its evaluation of the application for a derogation.

The assessment of the British request has been conducted in close co-operation with DG COMP, which is in charge of the State aid aspect of the tax reduction.

- 1.2. The UK proposes to amend the Hydrocarbon Oils Duties Act 1979 to introduce a lower rate of duty for biodiesel used as road fuel with effect from its next planned Budget (spring 2002). This measure is designed to improve the environment by encouraging the use of cleaner biodiesel through reducing the duty rate on this fuel relative to diesel.

The UK already applies two rates of duty on gas oil used as propellant: one to conventional diesel fuel, and the other to ultra-low sulphur diesel (ULSD) with a sulphur content not exceeding 50 parts per million<sup>2</sup> (ppm). The differentiated rates were introduced to promote the production and use as a road fuel of ULSD, and so improve air quality, particularly in urban areas. This has been very successful: between 1997 and 1999, the differential achieved almost complete conversion of the UK diesel market to ULSD. The UK now wishes to encourage the production and use of biodiesel as a road fuel by introducing a further lower duty rate. The UK plans to set the rate for biodiesel at 20 pence per litre below that for ultra-low sulphur diesel. This equates to an excise duty of 25.82 pence (41.4 eurocent) per litre at current rates.

The UK authorities are intending to introduce the reduced rate of duty with effect from spring 2002 for a five-year period until 2007. The duty forgone as a result of the duty reduction is to be in the region of £10 million to £15 million per annum, although this will depend upon the numbers who decide to manufacture biodiesel.

- 1.3. Production costs of biodiesel exceed those of conventional diesel, and its retail price would therefore be uncompetitive without the duty reduction. The duty reduction is

---

<sup>1</sup> Directive published in OJ L 316, 31.10.1992, p. 12, as last amended by Directive 94/74/EC (OJ L 365, 31.12.1994, p. 46).

<sup>2</sup> Derogation renewed by Council Decision 2001/224/EC of 12.3.2001.

simply intended to offset the additional production costs. By removing this disparity, it will enable biodiesel to be sold at a similar pump price to conventional diesel.

The UK government will annually review the production cost of biodiesel, including the relative production cost of rape methyl ester (RME) and recovered vegetable oil, and the movements of rapeseed prices relative to fossil fuel prices and thus monitor that no overcompensation takes place. The UK government makes the express commitment to submit annual reports to the Commission setting out the conclusions of these reviews. As for any changes to the rates, these will be made in the Chancellor's annual Budget.

- 1.4. Subject to further review, the definition of biodiesel would be “a fuel made from biomass or used fried oils, to be used as a road fuel”.

Provided that the fuel concerned meets the specified definition for biodiesel the duty reduction will be granted to any producer of biodiesel in the UK<sup>3</sup>, any producer of biodiesel in another Member State (or third country) whose product is imported into the UK and any importer of biodiesel into UK. The UK authorities estimate that the domestic production is unlikely to exceed 1% of the total diesel sales at the present level of duty.

- 1.5. The tax incentive will apply to pure biodiesel at the point of production or import. The biodiesel can then be used either as pure fuel or be blended into diesel fuels (up to 5 per cent volume) in accordance with EN590. Duty on imported blends will be payable at the appropriate rates for the constituent parts in the relevant proportion.
- 1.6. The promotion of biodiesel is primarily a climate change abatement measure, although the overall greenhouse gas savings from the UK are likely to be modest as biodiesel is expected to account for only a small proportion of diesel sales. There are not expected to be any air quality benefits from the promotion of biodiesel, at least in terms of oxides of nitrogen (NO<sub>x</sub>) and particulates (PM<sub>10</sub>), the two air pollutants of most concern from a UK perspective. There is no strong evidence to suggest that biodiesel provides any significant emission reduction of these two pollutants, and most biodiesel consumed is likely to be blended with diesel.

There will also be some potential waste policy benefits if waste vegetable oils are used as a feedstock. The climate change benefits will be quantified when the level and type of biodiesel production becomes clearer following the duty reduction.

- 1.7. The UK Government is considering offering duty reductions or exemptions for a number of potential fuels used in pilot projects. However, it is unnecessary to have a pilot project covering biodiesel as its development is beyond the pilot project stage: the technology for producing it is already well known and tested.

---

<sup>3</sup> According to the UK government there is currently no existing commercial production of biodiesel in the UK.

## 2. EVALUATION BY THE COMMISSION

- 2.1. Under Article 8(4) of Council Directive 92/81/EEC, the Council, acting unanimously on a proposal from the Commission, may authorise any Member State to introduce further exemptions or reductions of excise duties for specific policy considerations.

The British authorities have applied to the Commission for derogations allowing them to apply excise duty reductions on biodiesel used as road fuel in accordance with Article 8(4) of Directive 92/81/EEC.<sup>4</sup>

As required by Directive 92/81/CEE, the other Member States have been informed of the United Kingdom's request.

- 2.2. Exemptions requested under Article 8(4) of Directive 92/81/EEC must be examined in terms of their compliance with Community policies.

The development of renewable energies and biofuels in particular has been encouraged since 1985. Already Council Directive 85/536/EEC of 5 December 1985 on crude oil savings through the use of substitute fuel components<sup>5</sup> stressed the role of biofuels in reducing Member States' dependence on oil imports and authorises the incorporation into petrol of up to 5% of ethanol by volume and up to 15% of ETBE by volume. Under Council Decisions 93/500/EEC<sup>6</sup> and 98/352/EC<sup>7</sup> and Decision 646/2000/EC of the European Parliament and of the Council,<sup>8</sup> the ALTENER programme on promoting renewable energies in the Community was adopted with the aim of securing a market share for biofuels of 5% of total motor vehicle fuel consumption by 2005. The 1997 White Paper on renewable sources of energy<sup>9</sup> further recommended setting an objective of the production of 18 million tonnes of liquid biofuels by 2010 as part of an overall goal of doubling the share of renewables in EU energy consumption by the same year. The Commission's Green Paper 'Towards a European strategy for energy supply security'<sup>10</sup> stresses the key role of tax instruments in achieving these aims by reducing the difference in cost price between biofuels and competing products. Lastly, on 7 November 2001,<sup>11</sup> the Commission adopted an action plan and two proposals for directives on encouraging the use of substitute fuels in the transport sector, starting with regulatory and tax measures designed to promote biofuels.

---

<sup>4</sup> Directive published in OJ L 316, 31.10.1992, p. 12, as last amended by Directive 94/74/EC (OJ L 365, 31.12.1994, p. 46).

<sup>5</sup> Council Directive 85/536/EEC of 5 December 1985, OJ L 334, 12.12.1985, p. 20, as last amended by Directive 87/441/EC of 29 July 1987 (OJ L 238, 21.8.1987, p. 40). Directive 85/536/EEC has been repealed as from 1.1.2000 (Art. 12 (1) of Directive 98/70/EC of the European Parliament and of the Council of 13.10.1998 relating to the quality of petrol and diesel fuels and amending Council Directive 93/12/EEC (OJ L 350, 28.12.1998, p. 58 – 68).

<sup>6</sup> OJ L 235, 18.9.1993, p. 41.

<sup>7</sup> OJ L 159, 3.6.1998, p. 53.

<sup>8</sup> OJ L 79, 25.10.2000, p. 1.

<sup>9</sup> COM(1997) 599 final, 26.11.1997.

<sup>10</sup> COM(2000) 769 final, 29.11.2000.

<sup>11</sup> COM(2001) 547 final, 7.11.2001.

The tax reduction requested by the British authorities is therefore in line with the Community's policy of promoting the biofuel sector in the interests of protecting the environment and ensuring security of energy supply.

The Commission notes that the tax reductions proposed by the United Kingdom are proportional to the percentage of biofuel contained in the final product and that the effective excise rates are higher than the minimum Community rates applicable:

Community minimum (per 1000 l) <sup>12</sup>	ULSD	Pure biodiesel
245 euros	734,3 euros <sup>13</sup>	413,8 euros
	458,2 GBP	258,2 GBP

The British authorities have undertaken to reassess the reduction in excise duty each year to monitor that it does not exceed the extra cost of manufacturing biodiesel compared with equivalent products of fossil origin. For that purpose, the UK government will in particular review the production cost of biodiesel, including the relative production cost of rape methyl ester (RME) and recovered vegetable oil, and the movements of rapeseed prices relative to fossil fuel prices. Any changes to the applicable rates will be made in the Chancellor's annual Budget.

The requested tax differentiation is of limited duration. The reduced rate in favour of biodiesel would have effect from spring 2002 for a five-year period until 2007.

As regards the State aid rules, a decision on the compatibility of the proposal will be adopted by the Commission as soon as the Council has authorised the United Kingdom's application.

### 3. DECISION

The Commission proposes that, under Article 8(4) of Council Directive 92/81/EEC, the Council authorises the United Kingdom to apply until 2007 differentiated rates of excise duty to road fuel containing biodiesel and on biodiesel used as pure road fuel.

The reduction in excise duty may not be greater than the amount of excise duty payable on the volume of biofuels present in the products eligible for the reduction.

The reduction in excise duty must be adjusted to avoid over-compensating for the extra costs involved in the manufacture of biofuels.

---

<sup>12</sup> In accordance with Directive 92/82/EEC, OJ L 316, 31.10.1992, p. 19, as last amended by Directive 94/74/EC (OJ L 365, 31.12.1994, p. 46).

<sup>13</sup> Average exchange rate in December 2001 is 0.624 GBP for one euro.

The rates of excise duty applicable to the mixtures referred to above must comply with the terms of Council Directive 92/82/EEC of 19 October 1992 on the approximation of the rates of excise duties on mineral oils,<sup>14</sup> and in particular the minimum rates laid down in Article 5 thereof.

---

<sup>14</sup> Directive published in OJ L 316, 31.10.1992, p. 19, as last amended by Directive 94/74/EC (OJ L 365, 31.12.1994, p. 46).

Proposal for a  
**COUNCIL DECISION**

**authorising the United Kingdom to apply a differentiated rate of excise duty to fuels containing biodiesel in accordance with Article 8(4) of Directive 92/81/EEC**

*(only the english text is authentic)*

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 92/81/EEC of 19 October 1992 on the harmonisation of the structures of excise duties on mineral oils,<sup>1</sup> and in particular Article 8(4) thereof,

Having regard to the proposal from the Commission,

Whereas:

- (1) The United Kingdom has applied for a differentiated rate of excise duty to be authorised on biodiesel used as road fuel either as pure fuel or blended into diesel fuels up to 5 per cent volume in accordance with EN590.
- (2) The other Member States have been notified of this request.
- (3) The development of renewable energies and biofuels in particular has been encouraged in the Community since 1985. Lastly, on 7 November 2001<sup>2</sup>, the Commission adopted an action plan and two proposals for directives on encouraging the use of substitute fuels in the transport sector, starting with regulatory and tax measures designed to promote biofuels.
- (4) The derogation requested by the British authorities is therefore in line with the Community's policy of developing the biofuel sector, in the interests of protecting the environment and ensuring security of energy supply.
- (5) The rate for biodiesel would be set at 20 pence per litre below that for ultra-low sulphur diesel (ULSD). This equates to an excise duty of 25.82 pence (41.4 eurocents) per litre of biodiesel at current rates. Furthermore, the reduction in excise duty proposed by the United Kingdom is proportional to the percentage of biofuel contained in the final product.

---

<sup>1</sup> 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).

<sup>2</sup> COM(2001) 547 final, 7.11.2001.

- (6) The effective rates of excise duty are higher than the applicable Community minimum rates, in accordance with Council Directive 92/82/EEC of 19 October 1992 on the approximation of the rates of excise duties on mineral oils:<sup>3</sup>

Community minimum (per 1000 l)	ULSD	Pure biodiesel
245 euros	734,3 euros <sup>4</sup>	413,8 euros
	458,2 GBP	258,2 GBP

- (7) The requested reduction should concern biodiesel, a fuel made from biomass within the meaning of Article 2 (b) of Directive 2001/77/EC of the European Parliament and of the Council of 27 September 2001 on the promotion of electricity produced from renewable energy sources in the internal electricity market<sup>5</sup>, or made from used fried oils, to be used as a road fuel.
- (8) The differentiated rate would apply to pure biodiesel at the point of production or import. The biodiesel can then be used either as pure fuel or be blended into diesel fuels. Duty on imported blends would be payable at the appropriate rates for the constituent parts in the relevant proportion.
- (9) Production costs of biodiesel exceed those of conventional diesel, and its retail price would therefore be uncompetitive without the duty reduction. The duty reduction is intended to offset the additional production costs. It will enable biodiesel to be sold at a similar pump price to conventional diesel.
- (10) The government of the United Kingdom should annually review the production cost of biodiesel and thus monitor that no overcompensation takes place.
- (11) The accorded authorisation should apply for a period of five years.
- (12) The Commission regularly reviews reductions and exemptions to check that they do not distort competition or hinder the operation of the internal market and are not incompatible with Community policy on protection of the environment, energy and transport,

HAS ADOPTED THIS DECISION:

#### *Article 1*

1. The United Kingdom is authorised to apply differentiated rates of excise duty to road fuel containing biodiesel and on biodiesel used as pure road fuel.

Biodiesel is a fuel made from biomass, within the meaning of Art. 2 (b) of Directive 2001/77/EC, or made from used fried oils to be used as a road fuel.

---

<sup>3</sup> OJ L 316, 31.10.1992, p. 19. Directive as last amended by Directive 94/74/EC.

<sup>4</sup> Average exchange rate in December 2001 is 0.624 GBP for one euro.

<sup>5</sup> OJ L 283, 27.10.2001, p. 33.

2. The reduction in excise duty shall not be greater than the amount of excise duty payable on the volume of biodiesel present in the products referred to in paragraph 1 eligible for the reduction.
3. The rates of duty applicable to the products referred to in paragraph 1 must comply with the terms of Directive 92/82/EEC, and in particular the minimum rate laid down in Article 5 thereof.

*Article 2*

Based on an annual review by the United Kingdom, the reduction in excise duty shall be adjusted to avoid over-compensating for the extra costs involved in the manufacture of biofuels.

*Article 3*

This Decision shall expire on 31 March 2007.

*Article 4*

This Decision is addressed to the United Kingdom of Great Britain and Northern Ireland.

Done at Brussels,

*For the Council  
The President*