



EUROPEAN COMMISSION

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WORKING LANGUAGE**
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Subject: State Aid / Poland
Aid No NN 40/2006 (ex N 92/2006)
Excise tax refund on gas oil used in agricultural production

Sir,

The Commission wishes to inform Poland that, having examined the information supplied by your authorities on the aid referred to above, it has decided to raise no objections to the relevant aid as it is compatible with the EC Treaty.

In taking this decision the Commission has relied on the following considerations:

I. PROCEDURE

- (1) In accordance with Article 88 paragraph 3, Poland notified the Commission of this measure by letter of 27 January 2006, registered as received on 30 January 2006. Supplementary information was sent by letters of 29 March 2006, 22 June 2006, 20 February 2007 and 3 October 2008 registered as received respectively on 30 March 2006, 23 June 2006, 22 February 2007 and 3 October 2008.
- (2) By letter of 6 July 2006 the Commission informed Poland that the aid was transferred to the registry of non-notified aids under number NN 40/2006 as it became apparent that the aid had already entered into force prior to its notification.
- (3) The Commission regrets that the Polish authorities have put the measure into effect.

Jego Ekscelencja
Pan Radosław SIKORSKI
Minister Spraw Zagranicznych
Al. Szucha 23
PL-00 - 580 Warszawa

II. DESCRIPTION

Budget

- (4) Annual budget of PLN 1,058 million (some €320 million); total budget PLN 15,870 million (some €4,809 million)¹.

Duration

- (5) The duration of the scheme is from 2006 to 2013.

Beneficiaries

- (6) Agricultural producers in Poland.

Type of aid

- (7) Tax advantage in the form of a partial return of excise tax on energy products.

Legal basis

- (8) Act on the refund of excise tax on gas oil used in agricultural production of 10 March 2006 (*Ustawa o zwrocie części podatku akcyzowego zawartego w cenie oleju napędowego wykorzystywanego w produkcji rolnej z dnia 10 marca 2006*).

Aid measure

- (9) According to the information provided, before implementation of the scheme Poland was among those Member States applying the highest rates of excise tax on fuel used in agricultural production, the tax rate amounted to €285 / 1 000 l.
- (10) Directive 2003/96/EC restructuring the Community framework for the taxation of energy products and electricity² sets out in table B in Annex I, in connection with Article 8 the minimum levels of taxation for motor fuels for agricultural use. This minimum level is lower than the minimum normally applicable to motor fuels under the Directive (cf. Article 7 in combination with Annex I, Table A).
- (11) The aim of the refund is to reduce the tax level for gas oil used as motor fuel (CN codes 2710 19 41 to 2710 19 49) to the equivalent of EUR 21/1 000 litres. The annual limit of the refund will be calculated by multiplying the amount of refund per 1 litre, the number of hectares owned or co-owned by the farmer and the figure 86 which corresponds to estimated maximum use of diesel per 1 hectare of land.
- (12) According to the Polish authorities, the maximum amount refundable per hectare of arable land owned or co-owned by the farmer is PLN 87.56.

¹ Exchange rate as of 21/08/2008.

² OJ L 283 of 31.10.2003, p 51.

- (13) The partial tax refund is granted for periods of six months on the basis of invoices substantiating the purchase of gas oil used as motor fuel for agricultural use. The tax refund will be administered by municipal authorities.
- (14) According to the information provided the legal or natural person wishing to benefit from the tax refund must apply to appropriate municipal office. The application must include, amongst others, the identification data of the applicant, the tax identification number and information on the number of hectares in possession of the applicant. The application must be accompanied by VAT invoices for gas oil purchased in the 6 months preceding the application.

III. ASSESSMENT UNDER COMPETITION RULES

Presence of aid within the meaning of Article 87 (1) EC

- (15) According to Article 87 (1) of the EC Treaty, 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, insofar as it affects trade between Member States, is to be deemed incompatible with the common market.
- (16) The aid at issue is financed out of State resources and benefits certain undertakings. According to the case law of the Court of Justice, aid to an undertaking seems to affect trade between Member States where that undertaking operates in a market open to intra-Community trade³. The mere fact that the competitive position of an undertaking is strengthened compared with other competing undertakings, by giving it an economic benefit which it would not otherwise have received in its normal course of business, points to a possible distortion of competition⁴. The beneficiaries of the aid at issue operate in a highly competitive international market⁵. The aid measure is thus capable of distorting competition and affecting trade between Member States and therefore constitutes aid within the meaning of Article 87 (1) of the EC Treaty.

Compatibility of aid pursuant to Article 87 (3) (c)

- (17) However, the prohibition of State aid in Article 87(1) is subject to certain exceptions.
- (18) Pursuant to Article 87(3)(c) of the Treaty aid may be considered to be compatible with the common market if it aims 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.

³ See in particular Judgment of the Court of 13 July 1988, Case 102/87, French Republic v Commission of the European Communities, ECR 1988, p. 4067

⁴ Judgment of the Court of 17 September 1980, Case 730/79, Philip Morris Holland BV v Commission of the European Communities, ECR 1980, p. 2671

⁵ The agriculture sector is very open to Intra-Community trade. In 2004 agricultural products worth some € 183 billion (imports) to some € 187 billion (exports) were subject to intra-Community trade, representing some 57% of total agricultural production of €324 billion (Source: Eurostat).

- (19) The excise tax rebate was introduced by a law of 10 March 2006 which entered into force on 1 April 2006.
- (20) Chapter VI.F of the Community Guidelines for State aid in the agriculture and forestry sector 2007-2013⁶ (hereinafter: the Guidelines) sets out rules for aids linked to tax exemptions under directive 2003/96/EC. Those rules are applicable to unlawful State aid linked to tax exemptions under Directive 2003/96/EC since the entry into force of that directive.
- (21) In point 167 of the Guidelines it is stated that when a tax measure provided for in Articles 8 and 15(3) of Directive 2003/96/EC is applied equally to the whole agricultural sector, this measure contributes to the development of the sector. The Commission furthermore considers that this type of measures applied to motor fuel used in primary agricultural production will not unduly distort competition in the light of the small scale structure of farms in the European Union (more than 60% of farms have less than 5 hectares of utilized agricultural area).
- (22) Pursuant to paragraph 169 of the Guidelines the application of a lower minimum level of taxation as set out in Table B of Annex I to Directive 2003/96/EC to products used as motor fuel for the purposes of primary agricultural production will be declared compatible with Article 87(3)(c) of the Treaty, provided no differentiation is made within agriculture.
- (23) The reduced level of taxation applied in the present case to gas oil used as motor fuel for agricultural works, as shown in point 11 of the description, respects the minimum level set out in Table B of the Directive 2003/96/EC (the minimum rate is 21 EUR per 1000 litres).
- (24) No differentiation is applied within agriculture as the same lower level of taxation applies to all agricultural undertakings.
- (25) Point 172 of the Guidelines sets out that unlawful aid, granted since the entry into force of Directive 2003/96/EC, will be authorised if it fulfils all the relevant provisions set out in chapter VI.F.2 of the Guidelines and that no tax differentiation has been applied within agriculture.
- (26) As shown above, the tax refund applies to the whole agriculture sector without any differentiation.
- (27) It can be concluded that the aid scheme in question fulfils the conditions of chapter VI.F.2 of the Guidelines.
- (28) The duration of the scheme in question is foreseen until 2021. According to point 189 of the Guidelines, the Commission will only authorise schemes of limited duration. Schemes covering State aid for measures that can also benefit from co-financing under Regulation (EC) No 1698/2005 should be limited to the duration of the programming period 2007-2013. Other aid schemes should not apply for more than 7 years. The Polish authorities have committed themselves to limit the duration of the scheme until March 2013 and to re-notify the scheme if it continues after that date.

⁶ OJ C 319, 27.12.2006, p.1

IV. CONCLUSION

- (29) In view of the aforesaid, the Commission has accordingly decided to consider the aid to be compatible with the common market under Article 87 (3) (c) of the Treaty.
- (30) If this letter contains confidential information, which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site: http://ec.europa.eu/community_law/state_aids/.

Your request should be sent by registered letter or fax to:

European Commission
Directorate-General for Agriculture and Rural Development
Directorate M – Agricultural Legislation
Unit M.2 - Competition
Office: Loi 130 5/94A
B-1049 Brussels
Fax No: 0032 2 29 67 672

Yours faithfully,
For the Commission

Mariann FISCHER BOEL
Member of the Commission