



EUROPEAN COMMISSION

Brussels,
C(2008)

PUBLIC VERSION
WORKING LANGUAGE
**This document is made available for
information purposes only.**

**Subject: State aid / Czech Republic
Aid No. N 678/07
Partial refund of excise duties levied on motor fuels used in
agricultural production**

Sir,

I have the honour to inform you that, having examined the information supplied by your authorities, the Commission has decided to raise no objection to the State aid scheme mentioned above.

In reaching this decision, the Commission based itself on the following considerations:

1. PROCEDURE

(1) The measure was notified by letter dated 15 November 2007, registered as received on the same date. Additional information was received by letters of 5 March 2008, 18 June 2008, 2 September 2008 and 26 November 2008, registered as received on the same date.

2. DESCRIPTION OF THE AID SCHEME

2.1. Title

(2) Partial refund of excise duties levied on motor fuels used in agricultural production

Karel SCHWARZENBERG
ministr zahraničních věcí
Ministerstvo zahraničních věcí České republiky
Loretánské náměstí 5
118 00 Praha 1
Česká republika

2.2. Budget

- (3) Total: CZK 10 200 million (approximately €408 million)
Annual: CZK 1 700 million (approximately €68 million)

2.3. Duration

- (4) Date of Commission's approval until 31 December 2013

2.4. Beneficiaries

- (5) Agricultural undertakings (estimated number over 1000)

2.5. Objective

- (6) The scheme aims at supporting agricultural production by reducing production costs.

2.6. Type of aid

- (7) Tax advantage in the form of a partial refund of excise duties on motor fuels used in agricultural production

2.7. Legal basis

- (8) Act No 353/2003 Coll. on excise duties (Act on excise duties), as amended (*Zákon • 353/2003 Sb., o spot•ebních daních, ve zn•ní pozd•jších p•edpis• - §§ 45 a 57*)
- (9) Decree No 48/2008 Coll. on calculation of the refund rates for mineral oils used in agricultural production (*Vyhláška 48/2008 Sb. o zp•sobu výpo•tu nároku na vrácení spot•ební dan• zaplacené v cenách n•kterých minerálních olej• spot•ebovaných v zem•d•lské prvovýrob•*)

2.8. Aid intensity

- (10) 60% of eligible expenses

2.9. Cumulation

- (11) The aid cannot be cumulated with aid received from other local, regional, national or Community resources to cover the same eligible costs.

2.10. Background Information

- (12) Article 7 of Directive 2003/96/EC restructuring the Community framework for the taxation of energy products and electricity¹ ('Directive 2003/96/EC') in connection with its Annex I Table A sets minimum levels of taxation applicable to motor fuels. For gas oil this minimum level of taxation is fixed at 302 € per 1,000 liters from 1 January 2004 and at €330 per 1,000 liters from 1 January 2010.

¹ OJ L 283, 31.10.2003, p. 51, as amended

- (13) Article 8 of Directive 2003/96/EC in connection with its Annex I Table B provides for **lower minimum levels of taxation applicable to** products used as motor fuel for certain industrial and commercial purposes, including **agricultural works**. This lower minimum level of taxation is fixed at **€21 per 1,000 liters** in the case of gas oil and kerosene.
- (14) Article 26(2) of Directive 2003/96/EC points to the fact that the tax measures foreseen under the Directive might constitute State aid and in those cases have to be notified to the Commission pursuant to Article 88(3) of the Treaty.
- (15) Czech Republic intends to reimburse 60% of CZK 9,950 (i.e. CZK 5,970) excise tax per 1,000 liters of mineral oil² used as motor fuel in primary agricultural production, i.e. to apply a level of taxation of 40% corresponding to CZK 3,980 (some **€159³**) **per 1,000 liters**. The same level of taxation will be applied to blended mineral oils falling within CN codes 27 10 19 11 to 27 10 19 49 used as propellants with maximum 5% volume content of rape methyl ester or rape ethyl ester in the final blend.
- (16) According to the information and commitments provided mineral oils covered are those falling within CN 2710 19 11 to 2710 19 49. Energy products falling within CN codes 2710 19 41 to 27101949 correspond to gas oil and energy products falling within CN codes 27101921 and 27101925 correspond to kerosene. In both cases the applicable level of minimum taxation pursuant to Table B of Annex I of Directive 2003/96/EC is €21 per 1,000 liter. Energy products not covered under Table B of Annex I of Council Directive 2003/96/EC will be, according to the information provided by Czech authorities and in line with the principle of equivalence laid down in Article 2(3) thereof, treated as equivalent to gas oil.
- (17) According to the national legal basis submitted and the commitments provided by the Czech authorities the tax refund system will apply to the whole agricultural sector with no differentiation.
- (18) As explained by the Czech authorities, pursuant to Act on excise duties and the relevant implementing rules the tax refund will cover only the energy products used as motor fuel for the purposes of primary agricultural production. The tax refund will be applied on the basis of real consumption with no maximum consumption limits. The applicant will be required to demonstrate that the motor fuel covered by the tax refund was used for primary agricultural production.
- (19) The Czech authorities confirmed the aid will be granted only towards activities begun after the Commission has authorised the aid scheme and after the competent authority has accepted the application by a binding decision indicating the amount of aid.

² Defined according to the national legislation as mineral oil falling within CN codes 27 10 19 11 to 27 10 19 49.

³ Exchange rate as of 21.10.2008: 1EUR = 25.308 CZK (Source: ECB)

3. ASSESSMENT UNDER COMPETITION RULES

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

- (20) 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 prohibited, insofar as it affects trade between Member States.
- (21) The aid at issue is financed out of State resources and benefits certain undertakings, primary agriculture producers (Cf. Section 2.4). 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 trade⁴. 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 competition⁵. The beneficiaries of the aid at issue operate in a highly competitive international market⁶. 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) EC Treaty.

3.2. Compatibility of aid pursuant to Article 87 (3) (c) EC Treaty

- (22) However, the prohibition of State aid in Article 87(1) is subject to certain exceptions. Pursuant to Article 87 (3) (c) of the EC 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.
- (23) Chapter VI.F of Community Guidelines for State Aid in the Agriculture and Forestry Sector 2007-2013⁷ (hereinafter: the Guidelines) sets out rules for aids linked to tax exemptions under Directive 2003/96/EC.
- (24) 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.

⁴ 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

⁵ 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

⁶ The agriculture sector is open to Intra-Community trade. Trade in agricultural products of the Czech Republic with other Member States in 2005: imports €3 228 million, exports €2 254 million. Extra – EU trade in agricultural products for Czech Republic in 2005: imports €367 million, exports €404 million (Agriculture in the European Union - *Statistical and Economic Information 2006*; February 2007; source: Eurostat and Directorate General Agriculture and Rural Development).

⁷ OJ C 319, 27.12.2006, p.1

- (25) 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 authorised, provided no differentiation is made within agriculture.
- (26) This scheme can be considered to meet all criteria set out in paragraph 169 of the Guidelines. Indeed, the tax advantage is applicable only to the energy products used as motor fuel for primary production (Cf. point 18) and no differentiation is applied within agriculture as the same lower level of taxation applies to all agricultural undertakings (Cf. point 17). Moreover, the minimum levels of taxation as set out in Table B of Annex I to Directive 2003/96/EC are respected (Cf. points 13, 15 and 16).
- (27) Pursuant to points 15 and 16 of the Guidelines, any aid measure must contain some incentive or require some counterpart on the part of the beneficiary. The Czech authorities confirmed that the incentive requirement set out in point 16 of the Guidelines will be met (Cf. point 19).
- (28) Consequently, it may be concluded that the aid measure complies with chapter VI.F of the Community guidelines for State aid in the agriculture and forestry sector 2007-2013.

4. CONCLUSION

- (29) In the light of the foregoing, the Commission has therefore decided to consider the aid compatible with the common market under Article 87(3)(c) of the EC 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 disclosure to third parties and to 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
Office: Loi 130 5/98A
B-1049 Brussels

Fax No.: 0032.2.296 7672

Yours faithfully,
For the Commission

Mariann FISCHER BOEL
Member of the Commission