



EUROPEAN COMMISSION

Brussels,
C(2010)

**Subject: State aid / Czech Republic
Aid No. NN 26/2010
Partial refund of excise duties levied on motor fuels used in
agricultural production (modification of the Aid scheme N 678/2007)**

Sir,

The Commission wishes to inform the Czech Republic that, after examining the information supplied by your authorities on the aid referred to above, it has decided to raise no objections to the aid in question, as it is compatible with the Treaty on the Functioning of the European Union (TFEU).

The Commission has taken this decision on the basis of the following considerations:

1. PROCEDURE

- (1) By electronic notification of 24 May 2010, registered as received on the same date. The file was transferred on 28 May 2010 to the register of non-notified aid under number NN 26/2010 as it appeared from the information provided by the Czech authorities that the proposed modified scheme had already been put into operation as of 1 January 2010.

2. DESCRIPTION OF THE AID SCHEME

2.1. Title

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

2.2. Budget

- (3) Total: CZK 6,800 million¹ (approximately € 268 million)
Annual: CZK 1,700 million (approximately € 67 million)

¹ Conversion rate 25.420 CZK / 1 EUR (OJ C 237, 2 October 2009, p.4).

Jan KOHOUT
ministr zahraničních věcí
Ministerstvo zahraničních věcí České republiky
Loretánské náměstí 5
118 00 Praha 1
Česká republika

2.3. Duration

- (4) 1 January 2010 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 č. 353/2003 Sb., o spotřebních daních, ve znění pozdějších předpisů)
- (9) Decree No 48/2008 Coll. on calculation of the refund rates for mineral oils used in agricultural production, as amended (Vyhláška 48/2008 Sb. o způsobu výpočtu nároku na vrácení spotřební daně zaplacené v cenách některých minerálních olejů spotřebovaných v zemědělské prvovýrobě)

2.8. Aid intensity

- (10) 60% of eligible expenses

2.9. Cumulation

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

2.10. Background Information

- (12) The notification concerns a modification of the aid scheme approved by Commission Decision C (2008) 7849 of 10 December 2008² as State aid N 678/2007. The modification concerns the applicable tax rate to mineral oils used as motor fuels for agricultural primary production. The originally approved level of taxation calculated as 40% of the general taxation level of CZK 9,950 per 1,000 litres, i.e. the amount of CZK 3,980 per 1,000 litres (approximately €157 per 1,000 litres), becomes now the minimum applicable tax rate. There are no other changes.
- (13) The Czech authorities informed that this modification was introduced as of 1 January 2010 when the applied tax rate was increased in order to collect more

² OJ C 26, 3.2.2009, p. 5.

money for the State budget. As of that date the Czech authorities apply an increased rate of CZK 4,380 per 1,000 litres (approximately €172 per 1,000 litres). This modification was implemented before its notification to the Commission. The Czech authorities informed that the rate might be adjusted again depending on the future budgetary needs. In any case, the Czech authorities confirmed that the rate shall never be fixed below the approved minimum rate of CZK 3,980 per 1,000 litres (approximately €157 per 1,000 litres).

- (14) Article 7 of Directive 2003/96/EC restructuring the Community framework for the taxation of energy products and electricity³ ('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 €330 per 1,000 liters from 1 January 2010.**
- (15) 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 **agriculture.** This lower minimum level of taxation is fixed **at €21 per 1,000 litres** in the case of gas oil and kerosene.
- (16) 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 108(3) TFEU.
- (17) According to the information provided mineral oils covered by the scheme are those falling within CN 2710 19 11 to 2710 19 49 and their blends with energy products used as propellants falling within CN 3824 90 99 with maximum 5% volume content of the latter in the final blend. Energy products falling within CN codes 2710 19 41 to 2710 19 49 are classified as gas oil and energy products falling within CN codes 2710 19 21 and 2710 19 25 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 the Czech authorities and in line with the principle of equivalence laid down in Article 2(3) thereof, treated as equivalent to gas oil.
- (18) 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 (primary production) with no differentiation.
- (19) As explained by the Czech authorities, pursuant to the 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.

³ OJ L 283, 31.10.2003, p. 51, as amended

3. ASSESSMENT UNDER COMPETITION RULES

3.1. Presence of aid within the meaning of Article 107 (1) TFEU

- (20) Under Article 107(1) TFEU, 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, i.e. agricultural primary producers (Cf. point 5). 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-EU 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 107 (1) TFEU.

3.2. Compatibility of aid pursuant to Article 107 (3) (c) TFEU

- (22) However, the prohibition of State aid in Article 107(1) is subject to certain exceptions. Pursuant to Article 107 (3) (c) TFEU aid may be considered to be compatible with the internal 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 (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-EU trade. Trade in agricultural products of the Czech Republic with other Member States in 2007 was as follows: imports €4 425 million, exports €3 106 million. Extra – EU trade in agricultural products for the Czech Republic in 2007 was as follows: imports €347 million, exports €368 million (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 19) and no differentiation is applied within agriculture as the same lower level of taxation applies to all agricultural undertakings (Cf. point 18). Moreover, the minimum levels of taxation as set out in Table B of Annex I to Directive 2003/96/EC are respected (Cf. points 12, 13 and 14).
- (27) The Commission notes that the present modification of the approved State aid scheme N 678/2007 was implemented in breach of the notification obligation pursuant to Article 108(3) TFEU. However, pursuant to point 172 of the Guidelines unlawful State aid granted since the entry into force of Directive 2003/96/EC will be declared compatible with Article 107(3)(c) TFEU if it fulfils all the relevant provisions of the Directive 2003/96/EC and no tax differentiation is applied within agriculture. On the basis of the foregoing, this condition is considered to be complied with in the present case.
- (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) The Commission regrets that the aid measure was put into effect in breach of Article 108 (3) TFEU.
- (30) Nevertheless, in the light of the foregoing the Commission has decided to consider the aid compatible with the internal market under Article 107(3)(c) TFEU.
- (31) If this letter contains confidential information that 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 this letter in the authentic language on the internet site:

http://ec.europa.eu/community_law/state_aids/state_aids_cs.htm.

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

Dacian CIOLOȘ
Member of the Commission