



EUROPEAN COMMISSION

Brussels,
C (2010)

**Subject: State Aid / Finland
Aid No N 449/2010
Tax refund on certain energy products used in agriculture**

Sir,

The Commission wishes to inform Finland 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 Treaty on the Functioning of the European Union (TFEU).

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

1. PROCEDURE

- (1) In accordance with Article 108(3) of the TFEU, the Finnish Permanent Representation to the European Union notified the Commission of this draft aid scheme by letter of 14 October 2010, registered as received on the same date. Additional information was submitted by letter of 24 November 2010, registered as received on the same date.

2. DESCRIPTION

2.1. Title

- (2) Tax refund on certain energy products used in agriculture

2.2. Legal basis

- (3) *Laki maataloudessa käytettyjen eräiden energiatuotteiden valmisteveron palautuksesta annetun lain (603/2006) muuttamisesta.*

2.3. Budget

- (4) € 156 Million for the duration of the scheme.

2.4. Duration

- (5) 01.01.2011—31.12.2013.

2.5. Beneficiaries

- (6) Over 1000 beneficiaries of all sizes: Professional farmers (*ammattimaiset maatalouden harjoittajat*) and professional glasshouse producers (*ammattimaiset kasvihuoneviljelijät*).

2.6. Aid measure

- (7) The objective of the notification at hand is to modify the existing aid scheme N 315/2006 approved by Commission Decision No C(2007)5341¹ of 29 October 2007 and amended by aid scheme N 581/2008 approved by Commission Decision No C(2009)4148² of 28 May 2009. Under the existing aid scheme Finland is authorised to reduce the applicable level of this excise tax on certain energy and electricity products where such products were used in primary agricultural and horticultural or glasshouse production in the period running until 31.12.2013. With the current modification the Finnish authorities intend to increase the budget of the aid scheme as well as the amount of refund offered.
- (8) The level of the excise tax is reduced for the beneficiaries by the means of an annual refund of the tax on the relevant energy products. The Finnish authorities state that from 1 January 2011 they will increase the level of excise tax on products in question by applying a taxation of 16.05 cents per litre of gas oil (instead of the current 8.10 cents/l), 18.79 cents per kilogramme of heavy fuel oil (currently 6.70 cents/kg) and 1.703 cents per kWh of electricity belonging to tax category I³ (currently 0.883 cents/kWh) and 0.703 cents per kWh of electricity belonging to tax category II⁴ (currently 0.263 cents/kWh). In view of the upcoming tax increase, the Finnish authorities envisage with the current notification also to increase the level of tax refund applicable to certain energy products used in agriculture in order to maintain the amount of tax that the beneficiary would have to pay after the refund is deducted on the same level as under the existing aid scheme.
- (9) In more detail, the notified modification would increase the tax refund by 7.35 cents per litre on gas oil, by 12.1 cent per kg on heavy fuel oil and by 0.38 cent per kWh on electricity belonging to tax class I in respect of the tax refund applicable under the approved aid scheme.
- (10) After the modification the refund and tax amounts would be as follows:

¹ OJ C 297, 08.12.2007, p. 2.

² OJ C 148, 30.06.2009, p. 5.

³ For example electricity used in private economy, in farming and forestry sectors, in construction, in wholesale and retail sectors, in hospitality and restoration sectors as well as electricity used in the service sector in general.

⁴ Lower level of taxation is applied to electricity used by industry as well as professional glasshouse producers.

Product	Years 2011- 2013			EU minimum
	Tax	Refund	Tax payable after refund	
Gas oil (cent/l)	16,05	13,2	2,85	2,1
Heavy fuel oil (cent/kg)	18,79	14,85	3,94	1,5
Electricity I (cent/kWh)	1,7	1,0	0,7	0,05

- (11) The refund is paid to professional farmers and glasshouse producers on the basis of the amounts of eligible energy products they have used for production purposes during the tax year. Tax under € 50 per tax year is not refunded. The energy products or electricity used for other than production purposes are not eligible for the refund. The applications for a refund have to be filed for each tax year separately. Professional farmers and professional glasshouse producers must record the amounts of eligible energy products used for production purposes in their bookkeeping and indicate them in their tax returns or another official document determined by the National Board of Taxation.
- (12) The Finnish authorities have confirmed that only the energy amounts used after 1 January 2011 and after the Commission Decision on the present notification are eligible for the increased tax refund.

2.7. Aid intensity

- (13) Variable (cf. point 10 above).

3. ASSESSMENT

3.1. Presence of aid

- (14) For Article 107(1) of the TFEU to apply, the measures must provide an economic benefit to an undertaking which it would not have received in its normal course of business, the aid must be granted to certain undertakings, the benefit must be granted by a Member State or through state resources and the aid must be capable of affecting trade between Member States.
- (15) These conditions are met.
- (16) The measure causes the State to lose tax revenue. Therefore the measure is financed out of State resources. Since the differentiated tax rates are available only to professional farmers and glasshouse growers and not to all undertakings in Finland, the measure benefits certain undertakings. As these benefiting undertakings are active in a highly competitive international market, the measure distorts or threatens to distort⁵ competition and affects trade between Member States.

⁵ According to the case law of the Court of Justice, improvement in the competitive position of an undertaking resulting from a State aid generally points to a distortion of competition compared with other competing undertakings not receiving such assistance, Case C-730/79, ECR 1980, p. 2671, paragraphs 11 and 12.

3.2. Compatibility of the measure with the State aid rules

- (17) Point 16 of the Community Guidelines for State Aid in the Agriculture and Forestry Sector 2007-2013⁶ (hereinafter: the Guidelines) provides that if the aid scheme creates an automatic right to receive the aid the aid may only be granted in respect of activities undertaken or services received after the aid scheme has been set up and declared compatible with the Treaty by the Commission.
- (18) The Finnish authorities have indicated that the increased tax refunds would be granted only on energy amounts used after the Commission has given its decision on the notified aid scheme (cf. point 12 above). The right to receive the refund at a certain level when the relevant energy products have been used in primary agricultural production is laid down in the applicable national provision and the authorities have no discretion as to granting the aid. Therefore the Commission considers that the notified aid scheme fulfils the conditions of point 16 of the Guidelines.
- (19) Chapter VI.F of the Guidelines sets out rules for aids linked to tax exemptions under directive 2003/96/EC⁷.
- (20) In point 167 of the Guidelines it is stated that when a tax measure provided for in Articles 8 or 15(3) of Directive 2003/96/EC is applied equally to the whole agricultural sector, this measure contributes to the development of the sector.
- (21) Point 170 of the Guidelines provides that a level of taxation down to zero to energy products and electricity used for primary agricultural production will be authorised provided no differentiation is made within agriculture.
- (22) The aid scheme, as modified by the present notification, continues fulfilling these conditions. The measure is based on Article 15 (3) of Directive 2003/96/EC. All agricultural producers using gas oil, heavy fuel oil and electricity in their primary agricultural production benefit from the reduced level of tax in the same way.
- (23) As the Commission noted in the Decision on the approved aid scheme, the fact that the beneficiaries will receive the tax refund only from € 50 cannot as such be considered differentiation within agriculture since the same refund amounts apply to all agricultural producers.

4. CONCLUSION

- (24) The notified State aid scheme fulfils the criteria as set out in Chapter VI.F of the Community Guidelines for State Aid in the Agriculture and Forestry Sector 2007-2013. Therefore the Commission has considered the aid scheme to be compatible with Article 107 (3) (c) of the TFEU.

⁶ OJ C 319, 27.12.2006, p.1

⁷ OJ L 283, 31.10.2003, p. 51, as last amended by Council Directive 2004/75/EC (OJ L 195, 2.6.2004, p. 31).

- (25) 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/state_aids_texts_fi.htm.

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 5/128
B-1049 Brussels
Fax No: 0032 2 29 67 672

Yours faithfully,
For the Commission

Dacian CIOLOȘ
Member of the Commission