

Proposal for a Council Directive amending Directive 92/81/EEC and Directive 92/82/EEC to introduce special tax arrangements for diesel fuel used for commercial purposes and to align the excise duties on petrol and diesel fuel

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EXPLANATORY MEMORANDUM

1. TAXATION

Taxes on fuels and vehicles vary considerably from one Member State to the next. To take fuels first, only the structure of excise duties is harmonised across the Community. The rates themselves still differ a great deal. For instance, those for gas oil used as a propellant (diesel fuel) range from EUR 245 to EUR 750 per 1 000 litres. Then, for vehicles, there is a multitude of national taxes, all of them differing as to scope, method of calculation and rates.

The fact that excise duty rates are not harmonised distorts competition in the internal market and reduces the Member States' scope for determining taxation policy for energy in general and fuels in particular. It has to be highlighted that negative consequences on the environment also result from this situation. This much was established as long ago as 1997 when a proposal for a directive to restructure the Community's framework for taxation of energy products was put forward ⁽¹⁾.

The White Paper, European transport policy for 2010: time to decide ⁽²⁾, stresses the need to do more to confront transport users with the real costs. It touches on the need to change, not to say revolutionise, price structures — which, in spite of multifarious taxes, no longer reflect the full external costs of transport and simply result in the burden being split unfairly between infrastructure operators, taxpayers and users. The White Paper therefore proposes introducing a graduated tax on transport infrastructure use and making the tax system more consistent by bringing in a single tax on commercial road transport fuel by 2003 to round off the internal market.

Therefore, in the context of a global and coherent approach to these aspects of common transport policy, the Commission will shortly be publishing a communication prior to drafting a proposal for a framework directive on infrastructure charging. Moreover, a communication on passenger vehicles taxation will be adopted. It aims at initiating a debate, which will mainly cover registration and circulation taxes.

The proposal in this paper sets out the criteria for establishing a separate tax category for diesel fuel used for commercial purposes (commercial diesel fuel). The main aim is to:

- uncouple the tax arrangements for fuel used for commercial purposes from those for fuels used for private purposes, which would make it easier for Member States wishing to do so to increase the excise duty on diesel fuel used for private purposes to bring it into line with the excise duty levied on petrol;
- in the long term, arrive at a point where taxes on commercial diesel fuel are harmonised upwards, which would reduce distortion of competition between operators.

⁽¹⁾ COM(1997) 30, 12.3.1997.

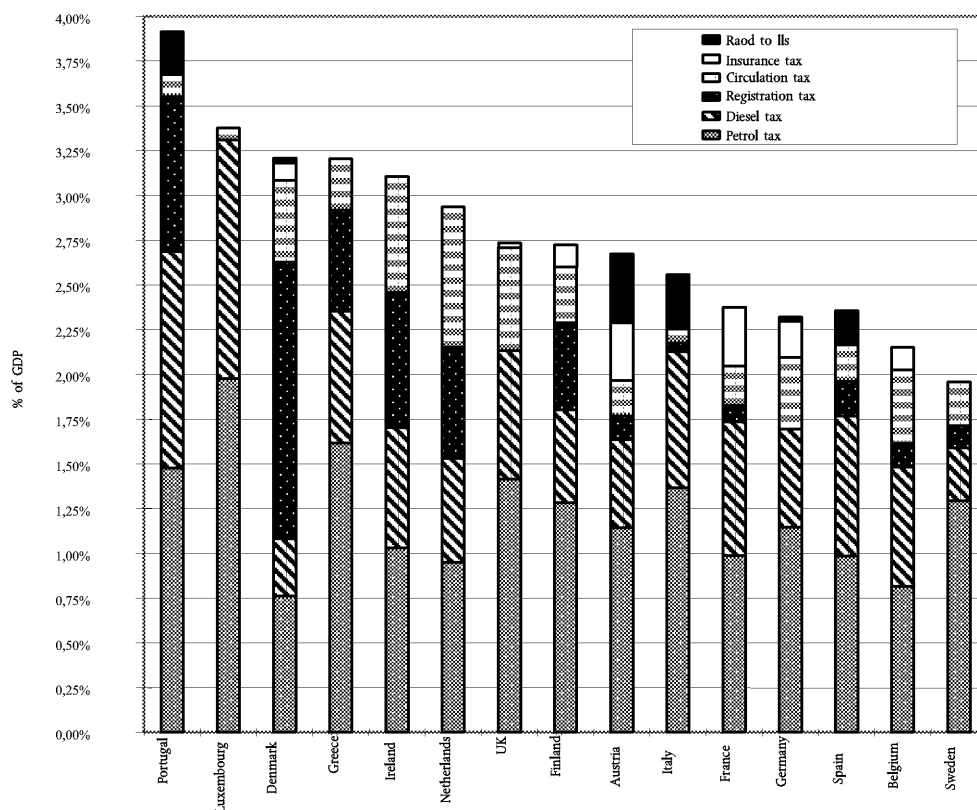
⁽²⁾ COM(2001) 370, 12.9.2001.

Apart from ensuring that the internal transport market operates more smoothly, the proposal meets common transport policy objectives and will provide better protection for the environment by applying the polluter pays principle. It is therefore clearly consistent with the general principles on excise duty set out in the Commission's communication, Tax policy in the European Union — Priorities for the years ahead ⁽¹⁾.

2. TAXATION OF TRANSPORT

Transport is a major source of revenue for the Member States.

Vehicle tax revenue as a percentage of GDP (1995) ⁽²⁾



Generally speaking, taxes levied on anything to do with transport are not earmarked for particular purposes in Member States' budgets; these revenues simply go straight into the national and regional budgets.

There are three main categories of such taxes — those on the purchase (VAT, registration taxes), the ownership (annual road tax, insurance tax) and the use (excise duty on fuels, the Eurovignette ⁽³⁾, road infrastructure charge) of vehicles. These taxes and charges may be fixed or variable, differentiated or not, national (i.e. linked to ownership of a vehicle) or territorial (i.e. linked to the place where a vehicle is used). Then there are also taxes which are set at Community level (VAT, excise duty, the Eurovignette).

⁽¹⁾ COM(2001) 260, 23.5.2001.

⁽²⁾ There are no figures on revenue from motorway tolls and user charges for France, Belgium, Luxembourg or Greece, or on revenue from vehicle insurance premiums for the United Kingdom, Finland, Portugal, the Netherlands, Luxembourg, Ireland, Italy or Greece.

⁽³⁾ Council Directive 1999/62/EC of the European Parliament and of the Council of 17 June 1999 on the charging of heavy goods vehicles for the use of certain infrastructures (OJ L 187, 20.7.1999, p. 42).

3. FUEL TAXES

3.1. Community legislation

Generally speaking, fuel taxes are split into three types: excise duty, which is a specific duty (calculated per physical quantity of a product), hypothecated taxes ⁽¹⁾ and VAT, which is an *ad valorem* duty (i.e. proportional to the selling price of a product).

On VAT, the Sixth Directive provides that oil products must be taxed at a standard rate of 15 %. However, certain reduced rates applicable in 1991 may be maintained under transitional arrangements. Where fuels are concerned, only Luxembourg makes use of this option, applying a VAT rate of 12 % to unleaded petrol.

In the case of excise duty, the Member States decided in 1992 to establish a Community system for taxing mineral oils. This decision was transposed into two Directives, one on the harmonisation of the structures of excise duties on mineral oils (92/81/EEC) ⁽²⁾, and the other on the approximation of the rates of excise duties on mineral oils (92/82/EEC) ⁽³⁾. The Directives lay down a minimum tax rate for each type of mineral oil, depending on whether it is used as a fuel, for industrial or commercial purposes or for heating.

3.2. Community minimum rates and rates applied by the Member States

The minimum rates of excise duty, which have not been reviewed since entry into force of Directive 92/82/EEC, are (in EUR/1 000 litres):

	Leaded petrol	Unleaded petrol	Diesel fuel
Minimum rate	337	287	245

Excise duty varies greatly from one Member State to the next. The Table below illustrates the situation (in EUR/1 000 litres, as at February 2002):

	B	DK	D	EL	E	F	IE	I	L	NL	A	P	SF	S	UK
Eurosuper	507	548	624	296	396	574	401	542	372	627	414	479	560	510	742
Diesel fuel	290 (*)	370 (*)	440 (*)	245	294	376	302 (*)	403	253 (*)	345 (*)	282	272	305 (*)	337 (*)	742 (*)

(*) Diesel fuel with a sulphur content of less than 50 ppm.

This shows that all Member States except the United Kingdom tax petrol more heavily than diesel fuel. The weighted averages ⁽⁴⁾ (for EU 15, per 1 000 litres) are around EUR 411 for diesel fuel and EUR 581 for Eurosuper. There is therefore EUR 0,17 less tax on a litre of diesel fuel than on a litre of petrol ⁽⁵⁾.

From the minimum rates laid down in the Directive and the actual rates applied, it is therefore clear that the Member States treat diesel fuel more favourably than petrol. Why?

⁽¹⁾ For instance, charges for monitoring the quality of petrol. Compared with excise duty, these taxes and charges are not usually very high.

⁽²⁾ OJ L 316, 31.10.1992, p. 12, as last amended by Directive 94/74/EC (OJ L 365, 31.12.1994, p. 46).

⁽³⁾ OJ L 316, 31.10.1992, p. 19, as last amended by Directive 94/74/EC (OJ L 365, 31.12.1994, p. 46).

⁽⁴⁾ The weighting is calculated from the volumes of diesel and Eurosuper consumed in 2000.

⁽⁵⁾ This is in fact the minimum difference since VAT, which is payable on excise duty, automatically increases the difference between the price of petrol and that of diesel.

Firstly, at the end of the eighties, commercial road haulage accounted for most of the diesel fuel consumed. There was a need not to jeopardise the economic and financial balance of the road haulage sector or the industries and services making intensive use of road haulage. At that time a very small proportion of private cars (15 %) used diesel fuel. The amount they consumed was therefore marginal (about 10 % of total sales of diesel fuel). Hence, in 1992, the Member States had created a commercial fuel before it officially came into existence.

Secondly, the consumer price for diesel fuel (before duty and tax), which was slightly higher than that for petrol ⁽¹⁾, probably played a part in the setting of Community minimum rates.

Excise duty on fuels has been introduced in all the candidate countries that are currently negotiating their accession to the EU. Levels of duty in force there are often much lower than in the Member States. Moreover, a significant number of countries are still below the current minimum excise rates and will have aligned to present Community legislation only by date of accession. However, in the course of the enlargement negotiations, no candidate country requested a derogation in respect of such duty.

3.3. Recent developments in the taxation of diesel fuel

Since 1997, some Member States have introduced differentiated excise duties for diesel fuel consumed by vehicles exceeding a given tonnage or used for road haulage. The main objective was to compensate for the increases in excise duty in the wake of the general move towards protecting the environment and restructuring the taxation of transport. Tax derogations were unanimously authorised by the Council, were last extended in 2001 and are due to expire on 31 December 2002 ⁽²⁾.

Finally, excise duty exemptions or reductions were granted for the diesel fuel consumed in local public passenger services ⁽³⁾ in Germany, Belgium, Denmark, France, Greece, Ireland, Italy, Luxembourg and the United Kingdom. These measures may remain in place until 31 December 2006 ⁽⁴⁾.

4. MAJOR CHANGES IN THE ECONOMIC AND POLITICAL CONTEXT

Since the late eighties, when the work on Directives 92/81/EEC and 92/82/EEC was being done, there have been major social and economic changes so that changes are now also needed in the Community framework for taxing fuels.

4.1. Liberalisation of road haulage — the economic facts

4.1.1. *Liberalisation of the markets*

Since the early nineties various regulations have led to road haulage being liberalised. Domestic road haulage markets have been fully open to competition since 1 July 1998.

Both the regular and occasional carriage of passengers has been fully liberalised since 1 January 1996.

⁽¹⁾ In 2000 the average minimum consumer price for petrol, before duty and tax, was EUR 272/1 000 l whilst that for diesel was EUR 284 (source: Oil Bulletin, No 1105, 18.3.2002; EU 15).

⁽²⁾ Council Decision 2001/224/EC of 12 March 2001 concerning reduced rates of excise duty and exemptions from such duty on certain mineral oils when used for specific purposes (OJ L 84, 23.3.2001, p. 23).

⁽³⁾ The legal base for such tax differentiation is Article 8(4) of Directive 92/81/EEC on mineral oils.

⁽⁴⁾ OJ L 84, 23.3.2001, p. 23.

4.1.2. *National and international transport*

International road haulage accounts for about one fifth of all road haulage (in tkm) and this proportion is growing. Member States account for very different shares of this international traffic, e.g. less than 10 % in the case of Finland, Greece and Sweden, but over 50 % in that of Belgium, Denmark, Luxembourg and the Netherlands.

Cabotage still accounts for only a small proportion of the European road haulage market — 0,2 % (in tkm) in 1998 according to the Commission.

4.2. **The fuel factor in the cost of running road transport businesses**

On average the fuel item (including taxes) represents between 15 and 20 % of the running costs of a road haulage business ⁽¹⁾. As a proportion of running costs, this item increases in direct relation to vehicle size. For a 40 t lorry it is as much as 20 % whilst for a smaller vehicle it may be less than 10 %. As excise duty represents just under 60 % of the pump price for diesel fuel (excluding VAT), this duty accounts for between 10 and 12 % of the running costs of a road haulage business.

Similarly, fuel accounts for between 10 and 15 % of the running costs of road passenger operators ⁽²⁾.

Erratic fluctuations in prices for crude oil throw into even higher relief the differences between the taxes levied on diesel fuel in different Member States, as did the further sudden increase in the price of crude in the summer of 2000.

4.3. **Distortions of competition**

In a liberalised market, where competition is stiffer, the differences in operating costs resulting from national taxes and levies have a greater impact.

Big trucks have tanks of huge capacity, which allow them to cover between 1 500 and 3 000 kilometres on a single tank ⁽³⁾. That means in reality that hauliers involved in international activities conduct a kind of fiscal planning: they take advantage of the very significant differences in national excise duties on diesel fuel by filling up in Member States with the lowest taxes ⁽⁴⁾.

These detours have also negative effects on the environment because a longer distance is driven in comparison with what would be necessary if the different duty rates would not exist.

These behaviours create distortions of competition on haulage markets as far as operators do not enjoy the same possibilities of purchasing low taxed fuel.

Detours motivated by tax reasons lead to loss in budgetary resources for the Member States.

⁽¹⁾ A study by Deutsches Verkehrsforum indicates that in certain situations the fuel item can be as high as 30 % of running costs, for instance when a lorry only ever fills up in a country where excise duty is high. FEBETRA (Fédération belge des transports) figures show that, on average, this item represented some 20 % of the running costs of Belgian undertakings in 2000, as compared with 14 % in 1998.

⁽²⁾ Sometimes there are significant differences between urban, inter-city and occasional passenger transport.

⁽³⁾ The coupling of tanks grants a capacity of more than 1 000 l. The average fuel consumption of a 40 t lorry is 35 l/100 km.

⁽⁴⁾ A study by OECD (OECD/GD(97) 69 CO₂ Emissions from road vehicles) confirms the existence of strong incentives, in particular for international freight hauliers, to achieve this type of fiscal planning. The study acknowledges that there is no precise estimation of this phenomenon; it underlines that the fiscal planning would be especially important in the EU. 'Gasoline tourism' is thought to account for about 20 % of gasoline sales in Switzerland.

Moreover, due to the range of their trucks, hauliers involved in international activities benefit from the effective possibility of reducing their running costs on national markets. A distortion of competition exists therefore as regards companies only active at national and regional levels, which do not enjoy the possibility of purchasing diesel fuel where it is the cheapest.

4.4. Trend towards more diesel-engined passenger vehicles in Europe ⁽¹⁾

4.4.1. Huge growth in sales of diesel-engined vehicles

The proportion of passenger vehicles in the European Union using diesel fuel has been growing substantially since the early nineties. This shows up particularly in the higher annual sales figures for diesel-engined vehicles as a whole, which represented 43 % of all registrations in 2001 as compared with less than 20 % in 1990 ⁽²⁾. Some manufacturers expect diesel-engined vehicles as a whole to account for over 50 % of the European market by 2005. Diesel-engined passenger vehicles accounted for 16,3 % of the existing fleet in 1995 and 22 % in 2001 ⁽³⁾.

There are major differences between the Member States. Expressed as a percentage, the number of diesel-engined vehicles registered in Greece and Sweden in 2001 was still low whereas in Austria, Belgium, Spain, France and Luxembourg it exceeded 50 %.

Lower taxes on diesel fuel were the main factor in the spread of diesel-engined vehicles. However, taxes are now a relatively less important factor; others, particularly technology (e.g.) driving comfort and lower consumption), are taking over.

4.4.2. Diesel fuel consumption

Diesel fuel consumption in the European Union amounted to 128 million tonnes in 2000 ⁽⁴⁾.

At the end of the eighties, passenger vehicles accounted for some 10 % of total diesel fuel consumption. As a consequence of the spread of diesel-engined vehicles, the corresponding figure is now over 20 %, or even as high as 35 %, as the following Table shows:

Breakdown of diesel fuel consumption by type of vehicle (2000)									
	F	UK	E	NL	I	IE	EL	D	SF
Cars	35 %	20 %	15 %	22 %	26 %	21 %	6 %	21 %	12 %
Commercial vehicles < 16 t	27 %	33 %	33 %	33 %	31 %	40 %	23 %	27 %	38 %
Lorries > 16 t	34 %	37 %	42 %	41 %	36 %	29 %	63 %	47 %	38 %
Buses	3 %	10 %	10 %	5 %	7 %	9 %	8 %	5 %	12 %

Source: Tremove: A full description of the model is available on the Commission's website at (<http://europa.eu.int/comm/environment/air/tremoveassessment.htm>).

The increase in the share of diesel fuel in fuel sales shows that there has been a major change since the minimum rates of excise duty were set in Directive 92/82/EEC. As a consequence of this change Member States are receiving significantly less budget revenue than previously, although there is no objective justification.

⁽¹⁾ This proposal deals only with the tax consequences of the spread of diesel-engined vehicles.

⁽²⁾ Figures for passenger and light-duty commercial vehicles (of under 5 t); source: EAMA.

⁽³⁾ In total there were 206 million vehicles in the European Union in 2000 (source: CCFA).

⁽⁴⁾ Some 110 million tonnes of petrol were consumed in 2000 (source: Eurostat).

4.5. Sustainable development

4.5.1. *Internalising external costs*

The principles of sustainable development require that from now on transport users must learn to face up to real costs, i.e. costs which include the negative externalities of transport. The prices for goods, services or activities must cover any environmental damage they cause. There are many instruments which can be used to promote this internalisation of external costs. The instruments may be economic or technical, they may be voluntary industry-wide agreements or they may involve informing manufacturers and consumers.

Whether the economic instruments are taxes, emission licences or subsidies, they are generally regarded as effective because, by sending out incentive price signals, they encourage more environmentally responsible behaviour. Taxation is therefore an important instrument for dealing with diffuse sources of pollution such as vehicle exhaust emissions.

The external costs of transport are equivalent to some 8 % of GDP ⁽¹⁾, with cars, lorries and aircraft generating the highest external costs per unit carried. Accidents, noise, air pollution and climate change generate the highest external costs.

According to the Commission's communication on the European Community's sixth environmental action programme, Environment 2010: our future, our choice ⁽²⁾ most increases in greenhouse gas emissions are due to the burning of fossil fuels in cars, lorries, aircraft, power stations, domestic heating systems and the rest. The European Union's transport sector is already responsible for just under 30 % of total CO₂ emissions and the forecast is that this figure could rise to 40 %.

Generally speaking, taxes on diesel fuels are lower than those on petrol. There is a lesser degree of environmental cost coverage for diesel than for petrol ⁽³⁾ because the current requirements for nitrogen oxide emissions per kilometer for new diesel cars are significantly less stringent than those for petrol cars ⁽⁴⁾. Diesel engines also emit significantly higher amounts of particulates than petrol engines.

On the other hand, diesel cars emit significantly less CO₂ per kilometer because of their lower fuel consumption than petrol cars.

Therefore, according to criteria used to assess the impact on the environment (gas and particulate emissions, noise), there would be no reason for taxing differently diesel fuel and petrol consumed by passenger vehicles. A reasonable balance would mean both being taxed at broadly similar rates ⁽⁵⁾.

Furthermore, lorries of less than 16 t would generate higher external costs than heavier lorries, mainly because of their lower average load/consumption ratio.

Finally, if road haulage costs were more thoroughly internalised, this might encourage a shift towards the inter-modal carriage of freight and the link between expansion in transport and growth in GDP might actually be broken.

4.5.2. *Compatibility with other instruments for internalising external costs*

This proposal does not affect application of the tax differentiation methods already provided for in Directive 92/81/EEC.

⁽¹⁾ European Environment Agency — Environmental Signals 2001.

⁽²⁾ COM(2001) 31, 24.1.2001.

⁽³⁾ See for instance OECD/GD(97) 69: CO₂ emissions from road vehicles.

⁽⁴⁾ EURO III and EURO IV compliant.

⁽⁵⁾ Other taxes, particularly road and registration tax, would also have to be taken into consideration in such an analysis.

Member States may apply different rates of excise duty on fuels under fiscal control if a mechanism is introduced to internalise infrastructure, congestion and environmental costs by means of targeted, non-discriminatory charges. Here the Commission will take care to ensure that the benefit obtained from any differentiated excise duty does not exceed the amount of additional costs internalised. Such measures may be supplemented by additional exonerations or reductions in accordance with the procedure laid down in Article 8(4) of the above Directive.

This option is forward looking and means that any additional measures aimed at achieving full internalisation of the external costs of transport would be compatible with each other. Some Member States (Germany, Netherlands, United Kingdom) are looking into the possibility of introducing a charge based on distance covered, adjusted for local situations.

There is also to be a communication on passenger vehicle taxation — essentially registration and road tax — which will include guidelines to ensure compatibility between that communication and this proposal on commercial diesel fuel. In particular, the communication will set out the details of how vehicle taxes can be reformed and greened so that, in any Member States wishing to do so, the taxes can be deployed as more effective environmental protection measures.

5. APPROXIMATION AND HARMONISATION OF DUTY RATES

As mentioned in the Commission's communication, Tax policy in the European Union — Priorities for the years ahead, it is the Commission's view that a high degree of harmonisation of indirect taxes is necessary, as provided for in Article 93 of the Treaty. This orientation is particularly justified in a field where on the one hand, indirect taxes may create an obstacle to the good functioning of the Internal Market, and where on the other hand, taxation constitutes an efficient economic tool to solve environmental problems.

In the specific field of transport policy, the White Paper, European transport policy for 2010: time to decide notes that with the road transport sector now fully opened up to competition, the absence of harmonised fuel taxes seems increasingly to be an obstacle to the smooth functioning of the internal market. The White Book concludes on this issue by stressing the need to make the tax system more consistent by proposing uniform taxation for commercial road transport fuel to round off the internal market.

This is why the Commission only contemplates fuel duty harmonisation — that is the setting up of one single duty rate directly applicable by all Member States — for commercial diesel fuel, where distortions of competition may appear. Such distortions exist in international road haulage activities.

Minimum rates resulting from Council Directives 92/81/EEC and 92/82/EEC have not been updated since 1992; numerous derogations exist in Member States. The existence of mere minimum rates have led to well-known and significant divergences between national excise duty rates on diesel fuel. Market forces have not permitted a reduction in these divergences; to the contrary, they tend to increase over time. The setting up of an even higher minimum rate on commercial diesel fuel is not enough to end the distortions of competition on haulage markets. The existence of different duty rates between Member States will continue to be an incentive for hauliers to make detours only justified by tax motivations. The result of this behaviour is moreover also detrimental to environment protection because more greenhouse gases are emitted due to the longer distance driven and due to the supplementary energy used to transport the purchased motor fuel ⁽¹⁾.

⁽¹⁾ OECD/GD(97) 69: CO₂ emissions from road vehicles.

The reproach sometimes addressed to tax harmonisation is that it would deprive Member States from some room for manoeuvre. The Commission considers that, in practice, this room for manoeuvre is to a large extent already hampered as far as duties on fuel used for international road haulage are concerned. Indeed, as previously explained, the large range of trucks allows hauliers to purchase a significant part of their diesel fuel in Member States where excise duties are the lowest. Member States, which set high rates, lose a large proportion of their excise receipts to the profit of Member States applying lower taxation. This tax competition between Member States leads to an erosion of budgetary resources and prevent Member States wishing to implement an autonomous policy which would take into account environment or energy policies.

On the whole, to avoid this form of tax competition, which is detrimental to the environment, a common approach on commercial motor fuel is required at Community level.

However, the present proposal leaves Member States with greater freedom to define duty rates on non-commercial motor fuels. In this field, the Commission is only willing to act through an increase in duty rates to promote more approximation on duties applicable to diesel fuel and petrol.

In fact, with the uncoupling of commercial diesel fuel taxation, room for manoeuvre will be available for those Member States wishing to adapt their excise duties in order to achieve better efficiency in their environment and energy policies. Besides, harmonisation would not be justified because private consumption of motor fuels does not lead to traffic detours or transfers of tax revenues, leaving aside the normal functioning of the Internal Market in border areas.

6. PURPOSE AND SCOPE OF THE PROPOSED DIRECTIVE

It is therefore clear on the one hand that excise duty rates on commercial diesel fuel need to be harmonised and on the other hand that rates on non-commercial fuels have to be increased throughout the European Union. At the same time, the tax differences between diesel fuel and petrol have to be reduced.

This cannot be done unless the taxation of fuels used for commercial purposes is uncoupled from the taxation of fuels used for private purposes, and the most efficient level at which to do the uncoupling is the Community level.

Consequently, Directives 92/81/EEC and 92/82/EEC need amending to create two categories of diesel fuel, differentiated according to whether they are used for commercial or other purposes, and a minimum, appropriate, Community rate of duty needs to be established for each category.

6.1. Definition of commercial purposes

Diesel fuel used for commercial purposes is known as commercial diesel fuel. Usually, commercial purposes means both the carriage of persons and the carriage of goods.

6.1.1. Commercial vehicle markets

6.1.1.1. Structure of the road haulage vehicle market

In its decisions on company concentrations ⁽¹⁾, the Commission identified the fact that there were three subsectors in the commercial vehicle sector, namely light-duty vehicles of less than 7 t, medium-duty vehicles of between 7 and 16 t, and heavy-duty vehicles of over 16 t.

⁽¹⁾ E.g. cases IV/M.1519 Renault/Nissan (12.5.1999), COMP/M.1672 Volvo/Scania (14.3.2000) and COMP/M.1980 Volvo/Renault (1.9.2000).

The technical configuration of vehicles of over 16 t differs from that of vehicles of under 16 t, particularly where key factors such as engine and number of axles are concerned. The technical components for vehicles of over 16 t are usually more sophisticated since these vehicles have to meet stricter criteria for durability and running costs than is the case for less heavy vehicles. There is no need to break down the 16 t group any further, even if it includes both lorries and tractive units.

From the point of view of use, most vehicles of over 16 t carry more bulky or large-volume loads over long distances, or heavy goods over short distances. Vehicles of less than 16 t are used for final delivery, e.g. from a central distribution facility to retailers. Vehicles of between 7 and 16 t are used for carrying medium and light loads over short distances. Commercial vehicles of less than 7 t are used mainly by SMEs and public and community services. There is therefore no significant possibility of substituting one of these categories of vehicle for another; in particular, vehicles of over 16 t are not interchangeable with vehicles of under 16 t.

Also, manufacturers of commercial vehicles use different production lines for these three categories.

The Commission has come to the conclusion that vehicles of over 16 t are those which essentially operate on international haulage markets. Moreover, there is no possibility, either on the supply or on the demand side, of substituting vehicles of over 16 t for vehicles of under 16 t, or vice versa.

6.1.1.2. Structure of the road passenger vehicle market

In its decisions on company concentrations ⁽¹⁾, the Commission took the view that the main feature of the European market for buses and coaches was that there were three categories of product, namely intra-urban buses, coaches used for regular or inter-city services and touring coaches.

In general the customers for, the technical characteristics of, and the rules governing, each of these categories differ so that there is no possibility of substituting any one of these categories for another.

6.1.1.3. Registration and total number of vehicles

Annual registrations for the main categories of heavy commercial vehicles have progressed as follows:

(EU 15, 1 000 vehicles, rounded up)	1990	1995	2000
under 6 t	1 500	1 300	1 900
6 t-16 t	100	80	105
over 16 t	180	175	250
Buses and coaches	23	22	27

Taken as a whole, there were some 13 million light-duty commercial vehicles, 3,5 million vehicles of between 3,5 and 16 t and just under 2,2 million vehicles of over 16 t on the European Union's roads in 1995.

In 2000 there were some 515 000 buses and coaches on its roads.

6.1.2. Definitions

The Commission considers that distortions of competition, which need to be addressed, concern the use of diesel for commercial purposes and by those which are principally concerned with international transport activities.

⁽¹⁾ E.g. cases IV/M.1672, Volvo/Scania (14.3.2000) and COMP/M.2201 Man/Auwärter (20.6.2001).

In view of the structure of the markets concerned, the Commission defines the commercial purposes referred to in this proposal as follows:

- (a) the carriage of goods for hire or reward ⁽¹⁾ or on own account ⁽²⁾, by motor vehicles or articulated vehicle combinations intended exclusively for the carriage of goods by road and with a maximum permissible gross laden weight of not less than 16 tonnes;
- (b) the carriage of passengers, whether by regular or occasional service, by a motor vehicle constructed and equipped in such a way as to be suitable for carrying more than nine persons, including the driver, and intended for that purpose.

These are category M2 ⁽³⁾ and category M3 ⁽⁴⁾ vehicles, as defined in Council Directive 70/156/EEC of 6 February 1970 on the approximation of the laws of the Member States relating to the type-approval of motor vehicles and their trailers ⁽⁵⁾.

6.2. Setting the applicable rates

6.2.1. Rates applicable to commercial diesel fuel

The actual rates applicable at the beginning of 2002 to diesel fuel consumed by road transport vehicles result in the following figures ⁽⁶⁾:

(EUR/1 000 l)	EU 15	Except United Kingdom
Weighted average (*)	397	350
Arithmetic average	343	314
Standard deviation	122	53

(*) Based on annual consumption of diesel fuel (base: 2000).

There is therefore a group of Member States where the differences between the tax rates for diesel fuel are not significant and one Member State (United Kingdom) where the situation is atypical. Consequently it would not be realistic to proceed immediately to set a harmonised, single, Community excise duty.

The burden of change also needs to be spread fairly between the Member States.

Therefore, in the interests of subsidiarity, the Commission should propose approximation of the rates, with a view to their harmonisation in the medium term.

⁽¹⁾ Carriage of goods on behalf of another party, for remuneration.

⁽²⁾ Carriage not on behalf of another party.

⁽³⁾ Category M2: Vehicles used for the carriage of passengers, comprising more than eight seats in addition to the driver's seat, and having a maximum weight not exceeding 5 tonnes.

⁽⁴⁾ Category M3: Vehicles used for the carriage of passengers, comprising more than eight seats in addition to the driver's seat, and having a maximum weight exceeding 5 tonnes.

⁽⁵⁾ OJ L 42, 23.2.1970, p. 1, as last amended by Directive 2001/116/EC (OJ L 18, 21.1.2002, p. 1).

⁽⁶⁾ These averages differ from those given in Section 3.2 since the rates used here are those actually paid by road hauliers. The Table therefore includes the discounts granted in 2002 by France, Italy and the Netherlands to Community road hauliers.

6.2.2. Mechanism for bringing about convergence between excise duty rates for commercial diesel fuel

From 1 January 2003 a central Community rate will be set for commercial diesel fuel. The actual rates applied by the Member States must fluctuate within a band around this rate. The fluctuation band within which rates may move will be narrowed over time with a view to achieving harmonisation of excise duty rates for commercial diesel fuel by 2010.

Since 1993 the Community minimum rate for diesel fuel has been EUR 245 per 1 000 l. Simply correcting this rate in line with the consumer price index would give a rate of EUR 306.

The White Paper, European transport policy for 2010: time to decide, refers to a duty rate on commercial diesel fuel 'above the current average tax on diesel'. The current arithmetic average is 343 euros.

The Commission therefore proposes that, on 1 January 2003, the central rate should be set at EUR 350 and that the band within which rates may fluctuate should be plus or minus EUR 100.

The definition of a higher central rate, with a similar fluctuation band, would not be realistic in the present context.

However, Member States where the rate applied in 2002 averages more than 1.5 times the central rate of 1 January 2003 may remain outside the fluctuation band for a maximum seven years. Each of these Member States must adopt a convergence plan designed to ensure that their excise duty rate for commercial diesel fuel enters the fluctuation band applicable to the other Member States before 2010.

Starting on 1 March 2004, and every 1 March thereafter, the Community central rate will be corrected on the basis of the harmonised consumer price index (for EU 15) for the previous year. The maximum correction will be 2,5 %.

The Commission will publish the Community central rate annually in the *Official Journal of the European Communities*.

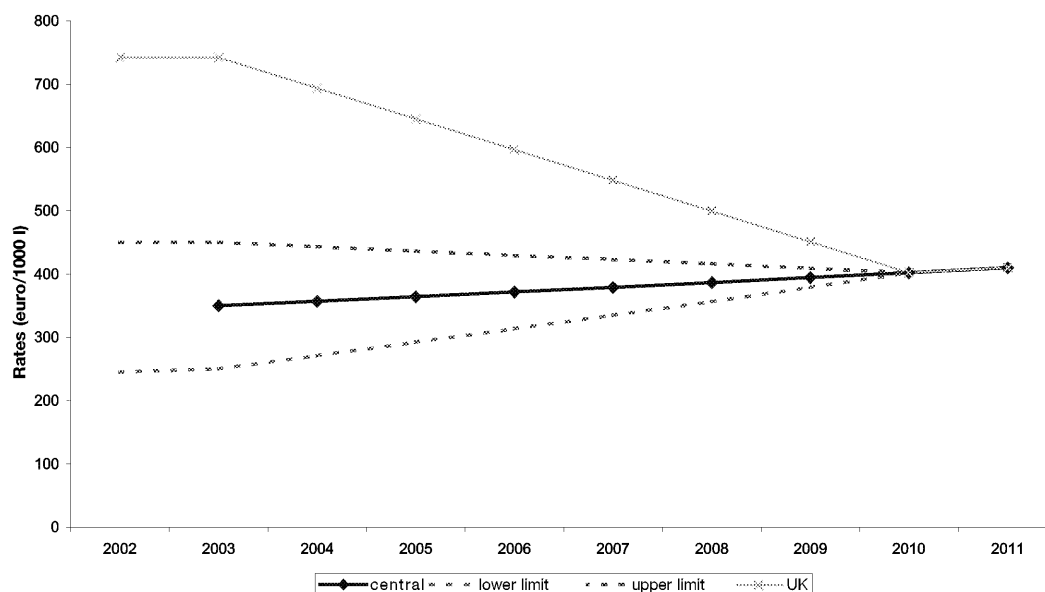
The Commission emphasises the fact that the proposed indexation will make it easier for the Member States concerned to draw up convergence plans and that it will spread the harmonisation burden as equitably as possible.

Starting on 1 March 2004, and every 1 March thereafter until 2008, the fluctuation band around the central rate will be narrowed by EUR 28 by raising the lower limit by EUR 14 and dropping the upper limit by EUR 14. In 2009 and 2010, the fluctuation band around the central rate will be narrowed by EUR 30 by raising the lower limit by EUR 15 and dropping the upper limit by EUR 15.

Application of this mechanism should result in the rates of excise duty applicable to commercial diesel fuel converging as illustrated in the Figure below ⁽¹⁾:

⁽¹⁾ This Figure incorporates an assumed inflation rate of 2 % per year.

Convergence of excise duties on commercial diesel fuel



6.2.3. Convergence between rates of excise duty on non-commercial diesel fuel and unleaded petrol

The Commission considers that the environmental impact assessment does not justify a difference in the taxation of petrol and diesel-engined cars. Therefore, on the long term, Member States have to be encouraged to bring about convergence between the rates of duty for non-commercial diesel fuel and for petrol, without prejudicing the environmental performance of these fuels or of the engines in which they are used.

In this connection a positive move would be to introduce measures to close the gap between the minimum Community rate of excise duty for non-commercial diesel fuel and that for unleaded petrol.

Given that the minimum Community rate of excise duty for unleaded petrol has not been reviewed since 1992, a correction for inflation would give a rate of around EUR 360 per 1 000 l of fuel.

The Commission therefore proposes that, on 1 January 2006, the minimum rates of excise duty for non-commercial diesel fuel and unleaded petrol should become the same and should be set, initially, at EUR 360 per 1 000 l.

Finally, the Commission considers that the amount of excise duty charged on non-commercial diesel fuel at domestic level should not be less than that charged there on commercial diesel fuel.

6.3. Implementation

The proposal may be implemented simply and gradually. Its consequences will be clear to operators.

Similar national measures have been implemented and have shown that a refund mechanism can work satisfactorily. In particular, the administrative costs remain within acceptable bounds when refunds are made at the same time as any VAT operations that are required. Post-payment inspection procedures could be organised along the lines of those for VAT.

The Commission does not wish to impose any particular method of implementing the proposal. In line with the principle of subsidiarity, each Member State will be free to use whatever instrument best suits its situation.

7. EFFECTS OF THE PROPOSED DIRECTIVE

This proposal uncouples the tax treatment of commercial diesel fuel from that of non-commercial diesel fuel.

Member States wishing to do so will therefore be able to increase the amount of excise duty they levy on non-commercial diesel fuel to bring it into line with that levied on petrol. Also, each year, the differences between the amounts of excise duty levied on commercial diesel fuel in the different Member States will be reduced gradually so that by 2010 it will be subject to one — harmonised — rate of excise duty throughout the European Union.

7.1. Economic effects

The effect of the proposal will be to reduce distortions in competition and, therefore, to make the single market function more smoothly.

The proposal will not have an inflationary impact in the medium term except in Member States whose rate of excise duty for diesel fuel is lower than the new Community minimum rate. The impact will also depend on the modalities of the recycling of the new fiscal revenues, which will come from the raise in duty rates. Where inflation occurs, the Commission considers that it will be marginal and that it will be compensated at Community level by the downward convergence of the rates, which are above the new Community rate. Furthermore, the inflationary impact could in most cases be compensated at Member State level by a reduction in other transport taxes. Additionally, if the inflation rate in the European Union exceeds or is forecast to exceed 2,5 %, the automatic indexing has a ceiling of 2,5 %.

Besides, the Commission does not consider that indexation according to inflation increases duty rates. The mechanism for indexing the central rate will maintain the value of excise duty on diesel fuel and petrol in real terms. It will also facilitate harmonisation of the rates of excise duty for commercial diesel fuel by reducing the gap to be bridged by Member States whose present rates are the most different from the average of all Community rates taken together. On the basis of the proposed definitions of commercial purposes, diesel fuel consumption breaks down as follows:

Breakdown of consumption of commercial and non-commercial diesel fuel (2000)

	F	UK	E	NL	I	IE	EL	D	SF
non-commercial diesel fuel	62 %	53 %	48 %	55 %	57 %	61 %	29 %	48 %	50 %
Commercial diesel fuel	38 %	47 %	52 %	45 %	43 %	39 %	71 %	52 %	50 %

Source: Tremove

7.2. Budgetary impact

In most Member States new budget resources will be generated because the proposal allows maximum flexibility as to the tax instruments to be used.

However the Commission emphasises that it does not in any way seek to increase overall levels of taxation in the Member States. It considers that the proposal will encourage the restructuring of national systems of vehicle taxation in the widest sense.

For instance, new revenue could be used to reorganise the system of fixed taxation of the possession or use of a vehicle since, in many countries, that system penalises diesel fuel. Thus the extra taxes levied on the annual road tax or vehicle registration tax for diesel-engined vehicles could be replaced by higher excise duty on diesel fuel so that the amount of duty paid depends entirely on how much a car is used. Such tax variability is desirable since it makes the tax system more efficient, especially from an environmental point of view.

New revenues would be allocated to specific funds to be used for financing measures to lessen or offset external costs or to other more general measures like a reduction in labour taxes (double dividend).

Where excise duties on commercial diesel fuel have to be reduced, this will not necessarily imply a reduction in nominal budgetary resources since they might be compensated by other revenues (i.e. taxes on other products or infrastructure charges).

The Commission stresses that a relatively strict definition of commercial purposes will increase budget revenue and reinforces the environmental benefits of the measure.

Harmonisation of excise duty on commercial diesel fuel will reduce the incentive to tax planning and will help Member States to consolidate their planning of foreseeable budgetary revenues.

7.3. Environmental impact

Implementation of the proposal will lead to a general reduction in emissions of pollutants such as NO_x, volatile organic compounds, sulphur dioxide and particulates. There will also be a general reduction in CO₂ emissions. However, one Member State (the UK) will have to reduce excise duty significantly. Since this will be dependent on the introduction of infrastructure charging, it will offset the environmental drawbacks.

Variation in pollutant emissions (% trend, 2010)										
	EL	UK	E	I	NL	IRL	F	SF	D	EU-9
NO _x	- 1,27 %	0,44 %	- 0,86 %	- 0,15 %	- 0,39 %	- 0,92 %	- 0,27 %	- 0,34 %	- 0,03 %	- 0,22 %
PM	- 1,34 %	0,70 %	- 0,92 %	- 0,24 %	- 0,54 %	- 1,34 %	- 0,28 %	- 0,32 %	0,00 %	- 0,17 %
VOC	- 0,99 %	0,25 %	- 0,54 %	- 0,02 %	- 0,17 %	- 0,85 %	- 0,07 %	- 0,24 %	- 0,01 %	- 0,13 %
SO ₂	- 2,02 %	0,21 %	- 0,62 %	- 0,10 %	- 0,22 %	- 1,28 %	- 0,16 %	- 0,24 %	- 0,02 %	- 0,17 %
CO ₂	- 1,76 %	0,19 %	- 0,47 %	- 0,08 %	- 0,16 %	- 1,14 %	- 0,15 %	- 0,22 %	- 0,02 %	- 0,14 %

Source: TREMOVE simulation

The increase in excise duties resulting from the proposal is part of the strategy to introduce greater tax variability and ensure the costs of transport are linked to a given territory.

The proposal helps answer the question of how the external costs of transport are to be internalised. The Commission points out that the higher excise duty on lorries of less than 16 t is also justified from the environmental point of view because these vehicles generate relatively higher external costs than heavier lorries.

The Commission would point out that other, more ambitious action to tackle the problem of internalising these costs is also envisaged. This mainly concerns infrastructure charging and the harmonisation of minimum clauses in contracts governing transport activities to allow businesses to review their prices if their costs (e.g. fuel costs) rise ⁽¹⁾.

Finally, the proposal will probably also have repercussions on the Community strategy to reduce CO₂ emissions and private vehicle fuel consumption ⁽²⁾. The Commission Communication Implementing the Community strategy to reduce CO₂ emissions from cars — second annual report on the effectiveness of the strategy (Reporting year 2000) explains these implications ⁽³⁾.

The aim of this strategy, which was approved by the Council in 1996 ⁽⁴⁾ is to attain an average level of specific CO₂ emissions from new cars of 120 g per CO₂/km by 2005 or 2010 at the latest. Commitments have been entered into with the European ⁽⁵⁾ (Association of European Carmakers — ACEA ⁽⁶⁾) ⁽⁷⁾, Japanese (Japan Automobile Manufacturers Association — JAMA ⁽⁸⁾) and Korean (Korea Automobile Manufacturers Association — KAMA ⁽⁹⁾) car industry. The Commission has endorsed the content of these commitments ⁽¹⁰⁾. All these agreements have the same quantified target for specific CO₂ emissions for the average total of new cars sold in the European Union: 140 g per CO₂/km (to be met by 2009 for JAMA and KAMA and by 2008 by ACEA). This strategy to reduce CO₂ emissions and car fuel consumption is making good progress. Nevertheless the Community must continue to work on tax measures to attain the Community target of 120 g per CO₂/km.

A greater reduction in fuel consumption has been achieved for diesel-engined vehicles than for petrol-engined vehicles. Diesel's market shares are expected to rise in the short term. However, in the longer term, this trend will be offset by the introduction of direct injection technology in petrol-engined vehicles. The Commission considers that, if the compensatory tax measures described in point 7.2 are not taken by Member States, the reduction in CO₂ emission will slow down as a result of the anticipated reduction in the number of new diesel-engined vehicle registrations. However there is no reason at this stage to believe that the final objective will not be achieved or that a Community monitoring programme should be introduced.

7.4. Effects on the industry

The gradual alignment of the rates of excise duty for commercial diesel fuel will significantly reduce distortion of competition in the now liberalised markets. Greater price stability should also result.

During the convergence period, the proposed mechanism for the reduction in the fluctuation band will allow for a progressive increase, if any, in fuel cost in the profit and loss account of haulage companies. The maximum value of the possible increase is around EUR 20 per 1 000 litres of motor fuel. In comparison with the average consumption of a 40 t lorry, this represents a running cost of about EUR 1 000 or 1 % of the cost for operating a truck.

⁽¹⁾ Cf. White paper on European Transport Policy.

⁽²⁾ COM(95) 689 final; Council conclusions of 25 June 1996.

⁽³⁾ COM(2001) 643 final, 8.11.2001.

⁽⁴⁾ Council conclusions of 25 June 1996.

⁽⁵⁾ COM(99) 446 final.

⁽⁶⁾ European manufacturers belonging to ACEA: BMW AG, DaimlerChrysler AG, Fiat SpA, Ford of Europe Inc., General Motors Europe AG, Dr. Ing. H.c.F. Porsche AG, PSA Peugeot Citroën, Renault SA, Volkswagen AG, AB Volvo.

⁽⁷⁾ COM(98) 495 final.

⁽⁸⁾ Japanese car manufacturers belonging to JAMA: Daihatsu, Fuji Heavy Industries (Subaru), Honda, Isuzu, Mazda, Nissan, Mitsubishi, Suzuki, Toyota.

⁽⁹⁾ Korean car manufacturers belonging to KAMA: Daewoo Motor Co. Ltd., Hyundai Motor Company, Kia Motors Corporation.

⁽¹⁰⁾ Recommendations 1999/125/EC, 2000/303/EC and 2000/304/EC.

For small lorries, fuel represents a much smaller share of the running costs, in particular because the average driving distance and the fuel consumption are significantly lower than for a heavier truck.

It must be added that the progression of the increases will favour the adaptation of the operators, by easing the transfer of the burden to the clients of the haulage firms.

Moreover, the Commission is of the view that any increase in excise duties on commercial diesel fuel could be counterbalanced by a reduction in other — fixed — costs such as annual road or insurance tax.

As a consequence, profit and loss accounts of haulage companies, particularly the small ones, should not be affected to an extent that they would not be able to bear.

The proposed definitions of commercial purposes should not mean any major changes to the structure of transport supply and demand since it is generally accepted that there is very little scope for substituting one category of vehicle for another in the markets in question.

The definition of commercial purposes adopted will ensure that companies of all sizes will benefit from the measures, particularly in the carriage for hire or reward or on own account sectors.

Where the motor vehicle manufacturing industry is concerned, simulations carried out with Tremove shows that this proposal will not have a significant effect on the spread of diesel-engined vehicles. If the Member States decided to ensure tax neutrality in respect of cars, the proposal would have even less effect because it now seems clear that the success of diesel-engined vehicles is the result not just of the low cost of the fuel but also of other factors such as driving comfort and technical performance.

As for the oil industry, higher excise duty on diesel fuel might slow down the growth in consumption of a product for which the European Union does not have sufficient refining capacity to meet demand. This would also make the Union less energy dependent and boost security of supply.

7.5. Impact on the European Union's citizens

For Member States which would have raised their duty rates in 2003, the proposal means an increase in the annual motor fuel budget of a maximum of 60 to 70 euros per non-commercial car ⁽¹⁾. However, in the Member States concerned, the current amounts of registration and circulation taxes makes compensation for the increase in excise duties possible ⁽²⁾. This kind of recycling may be beneficial for low-income households that have difficulty with lump-sum payments of annual fixed taxes.

Generally speaking, the Commission considers that car taxes as a whole need to be reformed by introducing greater tax variability and tax differentiation to ensure that citizens who are also consumers pay the cost of transport according to the use they really have of their cars.

⁽¹⁾ Hypothesis: 15 000 km driven/year; fuel consumption of 7 litres/100 km.

⁽²⁾ Except in Luxembourg, where a partial compensation only is possible, registration and circulation taxes in Greece, Belgium, Austria, Spain and Portugal are much above the value of the increased spendings due to higher excise duties on non-commercial diesel.

7.6. Impacts on candidate countries

The level of excise duties applied by many candidate countries is significantly lower than that in the European Union. While some candidate countries already comply with the current minimum excise duty rates set by Directive 92/82/EEC, others are as still in the process of alignment towards the current minimum excise rates and will comply with the present Community legislation only by the date of accession.

The present proposal sets ambitious targets. The fluctuation band around the central rate as such is large enough to allow some candidate countries to join the planned convergence mechanism without significant additional difficulties. However, taking into account their present level of excise duties, their ongoing economic transition and their relatively low income level, many candidate countries will face significant economic and social difficulties as regards the further increase of the minimum rates. In particular the likely price increase would negatively affect their citizens and the economy as a whole and may in particular represent an unbearable burden for SMEs. Moreover, the margin of manoeuvre of most candidate countries to internally compensate these additional burdens seems rather limited. Therefore the Commission suggests to grant -if needed- a transitional arrangement. Such an arrangement should last no longer than 2012 and should be accompanied with a clear timetable defining the progressive alignment towards the Community applicable minimum rates. Once the new *acquis* is adopted, the modalities will have to be discussed in the framework of the accession negotiations.

7.7. Legal certainty

Legal certainty is a very important component of this proposed directive. Before presenting this proposal, the Commission looked very carefully at its implications from the viewpoint of the Treaty's State aid rules. Some measures that can be taken by the Member States under the proposal could be said to be State aid as defined in Article 87(1) of the Treaty. However the Commission has concluded that, if this is the case, the aid in question could, in principle, be considered compatible with the common market. Firstly, a Community framework for the taxation of commercial diesel fuel under a gradual harmonisation approach will reduce the differences between Community companies as regards this important factor of transport costs. Consequently, the Commission believes it can take a positive approach to the tax measures in question in the light of competition rules, particularly those on State aid.

Secondly, the Community framework for State aid for environmental protection⁽¹⁾ introduces measures covering all operating aid in the form of tax reductions or exemptions. Paragraph 51 defines the conditions under which long-term non-degressive tax reductions may be considered to be compatible with the common market. A tax proposed by a Member States must be higher than the Community rate. One basic principle of the proposed directive is that the rate applying to non-commercial diesel fuel cannot be lower than that applying to commercial diesel fuel. If a Member State intends to take up the option to apply two different tax rates, the benefit to users of commercial diesel which might be considered to be State aid would obviously derive from national legislation applying a higher rate to non-commercial diesel than the minimum rate applicable under the Directive. The rates of excise duty applied by Member States to commercial diesel fuel will always be higher than the Community minimum rate in the transitional period preceding harmonisation. Once harmonisation has been achieved, the concept of the Community minimum rate will no longer be relevant as the rate applying is both a minimum and maximum rate. Finally, the Commission would point out that the level of excise duty on commercial diesel fuel is clearly set at a level to encourage industry to be more environmentally responsible. It can be concluded that all the conditions necessary for any aid to be considered compatible in accordance with paragraph 51 are met.

As regards measures to reduce excise duty if infrastructure charging is introduced, the Commission notes that Article 73 deems aid satisfying transport co-ordination needs to be compatible with the common market.

⁽¹⁾ OJ C 37, 3.2.2001, p. 3.

The Commission strongly defends a policy which is designed to achieve a sustainable transport policy which authorises and encourages measures to offset the additional costs of other rival modes of transport such as declining infrastructure, pollution, noise, congestion, the effects on health and accidents. Member States introducing road infrastructure charging to internalise external costs in conformity with Community legislation should be authorised to apply different rates of excise duty to fuels provided this is not discriminatory and does not exceed the amount of additional costs internalised and the Community minimum rate is respected. Nor does the proposal undermine the tax exemptions or reductions for local public passenger services granted under Article 8(4) of Directive 92/81/EEC.

8. CONCLUSION

Whilst observing the principle of subsidiarity, this proposed directive represents a significant step in a global approach aiming at smoothening the functioning of the Internal Market in a consistent manner with transport and environment policies. Other proposals, especially the proposal for a framework directive on infrastructure charging, will quickly complement the package of Community measures, which allow for the true costs of transport to be borne by transport users.

The present proposal uncouples the structure of taxation of diesel fuel according to commercial or other purposes.

Two main changes will result:

- Firstly, excise duty on commercial diesel fuel will be harmonised. This will improve the functioning of the internal market and significantly reduce distortions of competition in road haulage markets. Indirectly, road hauliers will benefit from more stable cost prices.
- Secondly, minimum duty rates on non-commercial fuels will be raised and taxes levied on non-commercial diesel fuel and on petrol will be approximated.

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 93 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the Economic and Social Committee,

Whereas:

confront transport users with the real costs and initiates a discussion on the need to create a separate category of fuel used for commercial purposes, in order to improve the functioning of the internal market.

- (3) Council Directive 92/81/EEC of 19 October 1992 on the harmonisation of the structures of excise duties on mineral oils⁽²⁾ and Council Directive 92/82/EEC of 19 October 1992 on the approximation of the rates of excise duties on mineral oils⁽³⁾ lay down the tax framework for fuels, in particular for gas oil used as a propellant (diesel fuel). The Community minimum rates have not been updated since 1992.

- (1) Article 6 of the Treaty provides that environmental protection requirements are to be integrated into Community policies with a view to promoting sustainable development.

- (4) Different Member States apply different excise duties to those fuels. On average, in the Community as a whole, diesel fuel is less heavily taxed than petrol.

- (2) The White Paper, 'European transport policy for 2010: time to decide'⁽¹⁾, stresses the need to do more to

⁽¹⁾ COM(2001) 370 final, 12.9.2001.

⁽²⁾ OJ L 316, 31.10.1992, p. 12. Directive amended by Directive 94/74/EC (OJ L 365, 31.12.1994, p. 46).

⁽³⁾ OJ L 316, 31.10.1992, p. 19. Directive amended by Directive 94/74/EC.

- (5) Since the early nineties various regulations have resulted in the gradual liberalisation of the road haulage and passenger transport markets and this has led to stiffer competition in those sectors.
- (6) The main risk of distortion of competition created by different rates of excise duty on diesel fuel in the Member States is on international transport markets.
- (7) Fuel represents a large proportion of the running costs of a road haulage business. Fuel costs for the heaviest lorries are roughly twice as high as those for lighter vehicles.
- (8) The commercial vehicle sector breaks down into three subsectors, namely those for light-duty vehicles of less than 7 t, medium-duty vehicles of between 7 and 16 t and heavy-duty vehicles of over 16 t. In general, vehicles of over 16 t are used to carry bulky or high-volume goods over long distances or heavy goods over short distances. Vehicles over 16 t mainly operate in international transport markets. Vehicles of less than 16 t are used for final deliveries, for instance from a central distribution facility to retailers over short and medium distances. There is no real possibility of substituting any of those categories of vehicle for another either on the supply or on the demand side of the three markets.
- (9) In the Community bus and coach sector there are three product markets, namely intra-urban buses, coaches used for regular or inter-city services and touring coaches. Council Directive 70/156/EEC of 6 February 1970 on the approximation of the laws of the Member States relating to the type-approval of motor vehicles and their trailers⁽¹⁾ classifies motor vehicles used to carry passengers.
- (10) The proportion of passenger vehicles using diesel fuel has been growing steadily since the early nineties.
- (11) Member States introducing road infrastructure charging in conformity with Community legislation should be authorised, under fiscal control, to apply different rates of excise duty to fuels. Such measures should not be discriminatory and should not exceed the amount of additional costs internalised, and the applicable Community minimum rate should be respected.
- (12) The principles of sustainable development require that transport users should face 'real' costs, that is to say, costs which include the negative externalities of transport.
- The prices for goods, services and activities should cover any environmental damage they cause. Economic tools, whether taxes, emission licences or subsidies, are generally regarded as effective because by sending out incentive price signals they encourage more environmentally responsible behaviour.
- (13) Taxation is an effective tool for dealing with diffuse sources of pollution such as CO₂ emissions from motor vehicles.
- (14) Generally speaking, the environmental costs of petrol have been internalised more thoroughly than those of diesel fuel, mainly because taxes on diesel fuel are lower than those on petrol. A better balance between petrol and diesel fuel needs to be achieved.
- (15) The tax arrangements for fuels used for commercial purposes need to be uncoupled from those for fuel used for private purposes, and the most efficient level at which to do so is the Community level.
- (16) Given the differences between the rates of excise duty currently applied to diesel fuel in the different Member States, a proposal should be put forward for aligning the rates for diesel fuel used for commercial purposes (hereinafter 'commercial diesel fuel') with a view to their harmonisation in the medium term. A central Community rate with a gradually narrowing fluctuation band on either side should therefore be set.
- (17) Separate provision should be made for Member States with atypical tax arrangements for diesel fuel.
- (18) Provision should therefore be made for indexing the central Community rate. This would maintain the real value of excise duty rates and ensure that the harmonisation effort is spread equitably.
- (19) The gradual alignment of the rates of excise duty for commercial diesel fuel should reduce distortion of competition in the now liberalised markets.
- (20) The definition of commercial purposes should be such as to ensure that undertakings of all sizes benefit from the measures, including the carriage for hire or reward or on own account sectors.
- (21) Diesel fuel used for non-commercial purposes should be taxed at least as highly as commercial diesel fuel.

⁽¹⁾ OJ L 42, 23.2.1970, p. 1. Directive last amended by Commission Directive 2001/116/EC (OJ L 18, 21.1.2002, p. 1).

- (22) In the long run, non-commercial diesel fuel and petrol should be taxed at similar rates at national level, the rates depending on the environmental performance of the fuels and the engines in which they are used. The Community minimum rates of excise duty for non-commercial diesel fuel and unleaded petrol should converge.
- (23) The option of applying different rates does not affect the right of Member States to apply under Article 8(4) of Directive 92/81/EEC for additional exemptions or reductions for special policy reasons.
- (24) Member States will endeavour to use any increase in excise revenue to restructure national tax systems, particularly as regards the taxation of vehicles in the widest sense, whilst ensuring the overall budget neutrality of the measures.
- (25) Directive 92/81/EEC and Directive 92/82/EEC should therefore be amended,

HAS ADOPTED THIS DIRECTIVE:

Article 1

In Directive 92/81/EEC, the following point IIa is inserted:

IIa. **Commercial gas oil used as a propellant**

Article 8b

Member States shall apply a specific tax rate to commercial gas oil used as a propellant within the meaning of Article 8c, provided that the rate of excise duty complies with the conditions set out in Article 8(d) and (e).

Article 8c

Commercial gas oil used as a propellant shall mean gas oil used as a fuel for the following commercial purposes:

- (a) the carriage of goods for hire or reward, or on own account, by motor vehicles or articulated vehicle combinations intended exclusively for the carriage of goods by road and with a maximum permissible gross laden weight of not less than 16 tonnes;
- (b) the carriage of passengers, whether by regular or occasional service, by a motor vehicle of category M2 or category M3, as defined in Directive 70/156/EEC.

Article 8d

A central Community rate of excise duty for commercial gas oil used as a propellant and a fluctuation band on either side of that rate shall be introduced on 1 January 2003.

The fluctuation band shall be defined by an upper and a lower limit.

The fluctuation band shall be narrowed gradually over time.

Article 8e

From 1 January 2003 to 31 December 2009, Member States may apply, under fiscal control, different rates of excise duty to fuels used by certain vehicles provided road infrastructure charging is introduced, in order to recoup transport costs such as infrastructure, congestion or environmental costs. The difference between the rates applied may not exceed the amount of additional costs internalised. The Community minimum rate shall be respected.

The vehicles referred to in the first paragraph are vehicles of less than 16 tonnes of category N2 or N3 as defined in Directive 70/156/EEC.'

Article 2

Directive 92/82/EEC is amended as follows:

1. The following Article 4a is inserted:

'Article 4a

From 1 January 2003, the minimum rate of excise duty for unleaded petrol shall be EUR 360 per 1 000 litres.

The minimum rate of excise duty for unleaded petrol shall be aligned with that of gas oil used as a propellant as defined in Article 8c of Directive 92/81/EEC (hereinafter "commercial gas oil") where the excise duty on gas oil used as a propellant exceeds EUR 360.'

2. In Article 5, paragraph 1 is deleted.
3. The following Article 5a is inserted:

'Article 5a

1. From 1 January 2003, the central rate defined in Article 8d of Directive 92/81/EEC shall be EUR 350 per 1 000 litres of commercial gas oil. From that date the fluctuation band on either side of the Community central rate shall be EUR 350, plus or minus EUR 100.

Notwithstanding paragraph 4, the rate of excise duty applied by each Member State to commercial gas oil shall be within the fluctuation band on either side of the central Community rate.

The minimum rate of excise duty on commercial gas oil for a given year shall be equal to the central rate for the year in question reduced by the value of the maximum deviation of the corresponding fluctuation band.

2. On 1 March 2004, and every 1 March thereafter, the upper and lower limits of the fluctuation band shall be adjusted so as to narrow the band, in accordance with the Table set out in the Annex.

3. On 1 March 2004, and every 1 March thereafter, the central Community rate shall be corrected for inflation in the previous year as measured by the consumer price index defined in Council Regulation (EC) No 2494/95 (*).

If the European consumer price index for the previous year, or forecasts for the current year, indicate an inflation rate exceeding 2,5 %, the maximum correction shall be 2,5 %.

On 1 February 2004 and every 1 February thereafter, the Commission shall publish the central Community rate in the C series of the *Official Journal of the European Communities*.

4. Member States which apply to gas oil used as a propellant, in 2002, an average rate of excise duty more than 1.5 times higher than the central Community rate in force on 1 January 2003 may set a rate of excise duty for commercial gas oil that lies outside the fluctuation band defined in paragraph 3, whilst respecting the Community minimum rate.

That option shall be available for a period not exceeding seven years starting from 1 January 2003.

Member States taking up that option shall adopt a convergence plan aimed at bringing their excise duty for commercial gas oil to a level within the fluctuation band applicable to the other Member States by 31 December 2009 at the latest.

5. From 1 January 2003, the minimum rate of excise duty on gas oil used as a propellant, other than commercial gas oil within the meaning of Article 8c of Directive 92/81/EEC (hereinafter "non-commercial gas oil"), shall be EUR 302 per 1 000 litres.

From 1 January 2006, the minimum rate of excise duty on non-commercial gas oil shall be EUR 360 per 1 000 litres.

The minimum rate of excise duty on non-commercial gas oil shall be aligned with that of commercial gas oil where the minimum rate of excise duty on commercial gas oil exceeds EUR 360 per 1 000 litres.

6. The rate of excise duty applied by any Member State to non-commercial gas oil may not be less than the rate of

excise duty applied by that Member State to commercial gas oil.

7. Member States shall make every effort to ensure that in the long term they apply similar levels of tax to non-commercial gas oil and unleaded petrol, taking account of the environmental performances of the fuels and the engines in which they are used.

(*) OJ L 257, 27.10.1995, p. 1.'

4. An annex, the text of which is set out in the Annex to this Directive, is added.

Article 3

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than 31 December 2002. They shall inform the Commission thereof forthwith.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by the Member States.

Article 4

This Directive shall enter into force on the twentieth day following its publication in the *Official Journal of the European Communities*.

Article 5

This Directive is addressed to the Member States.

ANNEX

'ANNEX

(Article 5a(2))

Year	Maximum deviation from the central rate (EUR)
1 January 2003	100
1 March 2004	86
1 March 2005	72
1 March 2006	58
1 March 2007	44
1 March 2008	30
1 March 2009	15
From 1 March 2010	0'