



No. 2462/08.09.2014

EUROPEAN COMMISSION

DIRECTORATE GENERAL FOR COMPETITION

For the kind attention of Mr. Alexander ITALIANER, Director General

Ref: anti-competition and discriminatory provisions of Romanian Governmental Decision no. 537/2014 regarding the reimbursement procedure for the diesel fuel excise used in road transport

Dear Mister Italianer,

Hereby, The National Union of Road Hauliers from Romania – UNTRR would like to bring to your attention the anti-competition and discriminatory provisions of the **Romanian Governmental Decision no. 537 from 26th of June 2014 on the procedure of reimbursement, as state aid, of the amounts representing the difference between the standard level of excise and the differentiated level of excise for the diesel used as engine fuel.**

Consequently, may we submit for your analyze the following provisions of the **Romanian Governmental Decision no. 537/2014, having a negative impact on the good functioning of the road transport market in Romania:**

1. **Concerning the additional eligibility conditions for the economic operators based in Romania (cap. II, art. 4, pct. 1, lit. C – quoted bellow) we consider that the reimbursement of the diesel excise only to Romanian transport operators that are not in one of the difficulty situations stipulated in this article, creates discrimination and generates unequal competition conditions**

- **Between operators licensed in Romania and those licensed in the other 27 member states**, as for foreign operators these additional eligibility conditions regarding the financial standing of the company are not being applied.
- **But also between Romanian operators themselves.** Taking into consideration the fact that diesel fuel expenses represent minimum 30% of the total operation costs of a transport company, for a certain company being in a difficult situation as stipulated by the article 4, pt. 1, lit. C, there will be additional burdens and consequently the respective company will not be able to recover because it will not compete with the other transport operators on a level playing field.

This situation would be a violation of the principles of the European regulation for access to the profession in the field of road transports, meaning Regulation (EC) 1071/2009, which stipulates in its opening paragraph (6) that: *"In the interests of fair competition, the common rules governing the exercise of the occupation of road transport operator should apply as widely as possible to all undertakings."*



We consider that irrespective of the financial difficulties of a company at a certain moment, it must have equal rights with the other ones operating on the market.

“ Art. 4, pct. 1), lit. c) for business operators based in Romania, if:

1.(i) are not in the category of companies in difficulty according to the provisions of cap. 2 section 2.1 of the Commission Communication – Guidelines for the state help of the companies being in difficulty, published in the Official Journal of the EU, series C, no. 244 from October 1st 2004;

2.(ii) are not under foreclosure proceedings, bankruptcy, any form of judiciary reorganization, dissolution, operational closing or winding-up;

3.(iii) are not declared inactive according to the provisions of art. 78¹ of the Government Order no. 92/2003 regarding The Tax Procedure Code, republished, with the subsequent alterations and completions, or has not entered temporary inactivity, registered in the commerce register according to the law;”

- 2. Concerning the provision on the reimbursement of the excise duty only to the Romanian economic operators that do not have debts to the general consolidated budget (according to cap. III – excise reimbursement procedure art. 15, pt. 4, quoted below), we consider it is clearly another abusive and discriminatory measure, creating severe distortions on the market.**

We draw the attention on the fact that a transport operator that has to receive from the general consolidated budget a bigger amount than the debt he has to pay to the general consolidated budget, cannot recover the due amount from the excise because he registers such obligations:

“Art 15 pt (4) In case economic operators in Romania have debts to the general consolidated budget in the moment the excise is to be reimbursed, the actual reimbursement of the approved amounts is made on the date they are cleared of such obligations.”

In other EU Member States, such as Hungary, the debts to the state are compensated with the reimbursements of diesel excise. **UNTRR requires the modification of the present Romanian legislation so that it becomes possible to compensate the amount owed to the general consolidated budget with the amount due to be recovered from the excise.**

- 3. Concerning the transport documents required from the companies, we draw the attention on the lack of clarity in the Article 17, c): “the transport documents stated in art. 3 pt. 14 from the Government’s Order no. 27/2011, with the subsequent modifications and completions, like, but **not only** the CMR waybill, shipping notices, road maps, that certify the vehicles were actually used for freight or passenger transport, regularly or occasionally, excluding public passenger transport”.**

May we mention that according to the present European legislation, most of the transport operators licensed in other EU member states have the duty to use only the CMR waybill. In the European legislation there is no such notion as shipping notice or road map.

At the same time, since in the text of the above quoted article, it is also used the expression „not only” the enumerated documents, we consider this formulation to be abusive because when fueling, a Romanian transport operator does not know which are the necessary additional documents and consequently, it may be impossible for him to show the respective documents after the moment of excise reimbursement.

- 4. Concerning the economic operator’s obligation to declare that the data recorded in the Register of diesel fuelling from own tanks are accurate and complete (according to Appendix no. 6), together with the obligation to keep the proving documents for a later check, we draw the attention on the fact that these documents, like the CMR waybill, they justify only the diesel consumed by a haulier to deliver the freight to its customer, but they do not justify the return trip to the company’s headquarter, which may be an „empty” run in 10-15% of the cases. According to a recent study of the**

European Commission on the European road transport market (03.02.2014), typically „empty” running is about 25% of the total movements in EU, but depending on the type of some transports (for example diesel fuel supplying to the stations) the empty runs proportion can be of 50%.

Although this situation is usually met in road transport sector, we draw attention on the fact that a later check of the transport documents to be made at the company's quarters based on Romanian Governmental Decision no. 537/2014, can result in a penalty between 5000 and 10000 lei for the economic operator (according to art. 19), as well as the opening of a penal file to the economic operator (according to Appendix 6, that stipulates his responsibility based on article 326 regarding the false declarations from the Penal Code) for a diesel fueling recorded in the register but for which the transport document (CMR) justifies only partially the consume.

In order to avoid such situations, **we consider there is an urgent need for clarifications concerning the checking procedure to be performed after the moment of excise reimbursement.**

Also, in order to **secure an equal treatment of both Romanian and foreign transport companies in the field of excise reimbursement, we require that clear provisions concerning the foreign operators checking procedures to be added to the present Governmental Decision.** Our association draws the attention on the fact that, by all the above mentioned anti-competition and discriminatory provisions of the present Governmental Decision 537/2014, a foreign transport operator is more advantaged than a Romanian one. We consider that such an anti-competitive advantage does not support the development of the free market of the energy products, affecting negatively the final users of those products.

In the light of all the above mentioned, The National Union of Road Hauliers from Romania – UNTRR requires the urgent modification of Romanian Decision no. 537/2014 concerning the procedure of diesel excise reimbursement for road transport operators, in order to set up a level playing field between Romanian and foreign operators and also between Romanian operators themselves, irrespective the financial difficulties of some of them at a given moment.

We mention that our association has also addressed Romanian Competition Council regarding these anti-competition and discriminatory provisions of the Romanian Government Decision no. 537/2014, affecting the road transport market in Romania.

Expressing our trust in your competent action towards the modification of the Romanian legislation for the benefit of the fair competition on European road transport market, we look forward for your reply and assure you of our highest consideration.

Yours faithfully,

**Secretary General
Radu DINESCU**

