



EUROPEAN COMMISSION
DIRECTORATE-GENERAL
TAXATION AND CUSTOMS UNION
Indirect Taxation and Tax administration
Control of the application of EU legislation and state aid/indirect taxes

Brussels, **04 NOV. 2014**
TAXUD C3 D (2014) **4010282**
AN/cs – DE/2014/CHAP-3135/preclosure

Official in charge: Adriana Nica
adriana.nica@ec.europa.eu
+32 2 29 85724

Mr Radu Dinescu
Secretary General
National Union of Road Hauliers from Romania
Ienăchiță Văcărescu Str. No. 60, Sector 4
040157, Bucharest
ROMANIA
By e-mail: office@untr.ro

Subject: Your complaint registered under reference CHAP(2014)03135

Dear Mr Dinescu,

I refer to your letters of 19 September 2014 addressed to Mr Zourek - Director General of Directorate-General for Taxation and Customs Union and to Mr Buti - Director General of Directorate-General for Economic and Financial Affairs, which have been registered as a complaint, as well as to my acknowledgment of receipt of 1 October 2014.

As your complaint alleges a breach by Romania of Article 13 of Directive 2003/96/EC¹, it has been attributed to my unit, which is responsible for ensuring the correct application of Union legislation in the field of excise duties by Member States.

Your complaint

You explained that in 2013 Romania introduced with effect from 2014 a method for calculating the value of the excise duties in Romanian currency, which resulted in an increase of these duties. The legislation provides that the higher exchange rate of the Euro to the national currency from October 2012 and October 2013 is chosen and it is updated with the average consumer price index of September 2013.

According to Article 218 of the Romanian Tax Code currently in force, as amended by Emergency Government Ordinance No. 102/2013:

"(1) The value in lei of the excise duties and the tax on crude oil from domestic production due to the state budget and set pursuant to this title in Euro equivalent on measuring unit is to be determined by converting the amounts denominated in Euro equivalent based on the exchange rate set for the first working day of October of the preceding year published in the Official Journal of the European Union.

¹ Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity, *OJ L 283, 31.10.2003*, p. 51.

(2) By derogation from the provisions of paragraph (1) above, when the exchange rate set for the first working day of October of the preceding year published in the Official Journal of the European Union is lower than the exchange rate set for the first working day of October of the year before the preceding year, the value in lei of the excise duties and the tax on crude oil from domestic production due to the state budget and set pursuant to this title in Euro equivalent on measuring unit is to be determined by converting the amounts denominated in Euro based on the exchange rate set for the first working day of October of the year before the preceding year published in the Official Journal of the European Union, value which is updated with the annual average of the consumer price index calculated in September of the preceding year and communicated officially by the National Statistics Institute until 15th of October.

(3) For 2014 the annual average of the consumer price index calculated in September 2013 provided at paragraph (2) is of 104.77%".

You argue that Romania does not comply with Article 13 of Directive 2003/96/EC.

Observations of the Commission services

Romania did not adopt the Euro and it uses its own currency. The Romanian legislation sets the applicable excise duty rates for energy products in two steps: first, it lays down the rates denominated in Euro and subsequently it provides at Article 218 of the Tax Code a mechanism to convert these amounts to national currency. The outcomes of the application of this two-step mechanism are the excise duty rates denominated in the national currency of Romania, which are to be applied by the operators.

Pursuant to Article 13 of Directive 2003/96/EC:

"1. For Member States that have not adopted the euro, the value of the euro in national currencies to be applied to the value of the levels of taxation shall be fixed once a year. The rates to be applied shall be those obtaining on the first working day of October and published in the Official Journal of the European Union and shall have effect from 1 January of the following calendar year.

2. Member States may maintain the amounts of taxation in force at the time of the annual adjustment provided for in paragraph 1 if the conversion of the amounts of the level of taxation expressed in euro would result in an increase of less than 5% or EUR 5, whichever is the lower amount, in the level of taxation expressed in national currency".

Directive 2003/96/EC lays down minimum excise duty rates for energy products. The purpose of the conversion rule set by Article 13 (1) of Directive 2003/96/EC is to enable to verify in an uniform manner the compliance of the applicable tax rates (expressed in national currency other than Euro) with the minimum excise duty rates (denominated in Euro).

Thus, the exchange rate provided at Article 13 (1) of Directive 2003/96/EC is applicable to the conversion to Euro of the applicable excise duty rates denominated in the national currency of Romania and which result in this case from the two-step mechanism described above. There is no link between the exchange rate according to Article 13 (1) of Directive 2003/96/EC and the national conversion mechanism used for the calculation of the applicable tax rate, which may contain elements like the inflation index. Usually the Member States set their national levels of taxation by a fixed number. Nevertheless, the method applied by Romania does not seem to infringe as such EU law, as it leads to clear results.

According to the information available to the services of the Commission, it seems that Article 218 of the Romanian Tax Code does not breach Directive 2003/96/EC.

Conclusion

In light of the above, I announce you the intention of the Commission to close your complaint, unless you provide my services (by e-mail: taxud-unit-c3@ec.europa.eu) further information attesting to an incompatibility with Union law at your earliest convenience and in any case within four weeks of receipt of this letter.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Micole Wieme', written in a cursive style.

Micole Wieme
Head of Unit