



EUROPEAN COMMISSION

Brussels, 6.9.2011
COM(2011) 532 final

2011/0232 (NLE)

Proposal for a

COUNCIL DECISION

authorising the United Kingdom to apply reduced levels of taxation to motor fuels consumed on the islands of the Inner and Outer Hebrides, the Northern Isles, the islands in the Clyde and the Isles of Scilly, in accordance with Article 19 of Directive 2003/96/EC

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

Taxation of energy products and electricity in the Union is governed by Council Directive 2003/96/EC¹ (hereafter referred to as the “Energy Taxation Directive” or the “Directive”).

Pursuant to Article 19(1) of the Directive, in addition to the provisions foreseen in particular in its Articles 5, 15 and 17, the Council, acting unanimously on a proposal from the Commission, may authorise any Member State to introduce further exemptions or reductions in the level of taxation for specific policy considerations.

The objective of this proposal is to allow the United Kingdom of Great Britain and Northern Ireland (UK) to introduce a reduced rate of excise duty on motor fuels (namely petrol and diesel) in all the islands of the Inner and Outer Hebrides, the Northern Isles, the islands in the Clyde (all off the coast of Scotland), and the Isles of Scilly (off the south west coast of England). According to the information provided by the UK the price of fuel in the areas which are to benefit from the measure is on average GBP 0,10 (app. EUR 0,11) more per litre than in other parts of the country. Higher prices in these areas are due to higher transport and distribution costs, and low population. The objective of the measure is to offer some mitigation against the high costs of motor fuels in the specified areas.

The request and its general context

Article 19(1) of the Directive envisages that the Council, acting unanimously on a proposal from the Commission, may authorise any Member State to introduce further exemptions or reductions in the level of taxation for specific policy considerations.

By letter dated 23 March 2011, under Article 19 of the Directive, the UK authorities have informed the Commission that they intend to apply a reduced rate. The reduced rate of the excise duty on fuel will be GBP 0,05 (app. EUR 0,06) per litre lower than the standard rate in the UK (GBP 0,59 or app. EUR 0,68). This would mean that the reduced rate would still be far above the current EU minimum per 1000 litres of EUR 359 for unleaded petrol and EUR 330 for gas oil.

The UK has requested for the reduction to be authorised for a period of six years, which is the maximum period indicated in Article 19(2) of the Directive.

According to the UK authorities, the price of fuel in the Scottish islands is around GBP 0,10 (app. EUR 0,11) per litre higher than the average for the rest of the UK. In the Scilly Isles it is even higher at around GBP 0,25 (app. EUR 0,28) per litre above the UK average. A GBP 0,05 (app. EUR 0,06) per litre reduction would not cover the full price difference, but would provide consumers with some compensation for the higher price which they have to bear.

The high price is caused by the additional costs of selling fuel in these regions. The UK authorities quote two key reasons for these higher costs:

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

1. Higher transport and distribution costs to deliver fuel to the islands, caused by extra shipping / truck transportation costs (longer distance and time), ferry costs, terminal operation costs and supplier premiums associated with the delivery of low volumes of fuel. In contrast, all mainland areas of England and Wales are within 100 miles (app. 160 km) of at least one refinery and can be served directly by road tankers. Transport costs to the Scottish islands are estimated to be at least GBP 0,03 per litre higher than on mainland Scotland.
2. The low population served (82 000 people aged 16 or over across 100 islands) and low volume of fuel sold per site means that fixed costs need to be spread across a small volume of sales. To put this in context: there are 65 fuel filling stations in total in these areas. Fixed costs for staff, rent, rates, heat, light, water, maintenance and repair must be factored into the final pence per litre pump price. The average volume of fuel sold per site on the Shetlands, Orkneys and Hebrides varies between 0,25 and 0,6 million litres a year, compared with 3,8 million litres for the rest of Scotland. In order to cover costs of running a fuel station, sales of 0,25-0,6 million litres would require a margin of GBP 0,07-0,15 per litre compared with a margin of GBP 0,033 per litre on sales of 3,8 million litres.

The disadvantage represented by the higher prices induced by the increased per unit cost is important for the local population, according to the UK authorities, because many of the residents have to travel significant distances to reach their nearest urban centre, as they often depend on private transport and because the areas benefiting from the measure are relatively low income areas.

Operation of the measure

In the UK, excise duty on road fuels is accounted for at the point when the fuel leaves the refinery, when it is imported or when it leaves an excise warehouse. At this point it would be difficult to identify the amount of fuel destined for eligible regions.

Therefore, the relief will be given at the point of sale on the eligible islands, thus avoiding any risk arising from diversion of reduced rate fuel. Fuel retailers on the islands would be registered with HM Revenue and Customs (HMRC) as approved retailers and would be required to reduce the price of a litre of fuel by the amount of the duty relief. They would in turn be entitled to claim a refund of duty from HMRC, on a periodic basis, based on the litres of fuel sold.

Scope

The territorial scope of the measure consists of all the islands of the Inner and Outer Hebrides, the Northern Isles, the islands in the Clyde (all off the coast of Scotland); and the Isles of Scilly (off the south west coast of England). The measure is aimed at private individuals but all purchases, including commercial will benefit from the lower tax rate. According to the information provided by the UK authorities of those vehicles licensed in the islands in 2009, 85 % were privately owned and 15 % were company owned.

Arguments of the UK authorities concerning the impact of the measure on the internal market

The UK authorities do not think that the measure would affect the proper functioning of the internal market. The largest organisations on the islands are public sector bodies such as local councils and health service providers. There is a wide spread of companies on the islands, but

they tend to have lower turnover than on average across the UK. According to the UK authorities, companies in the areas concerned have average turnover of around GBP 1,4 million compared with a UK average of around GBP 5,7 million.

The United Kingdom underlines that the relief does not cover the full cost differential between the islands and the UK mainland so it would be uneconomic for people to travel to the islands from the mainland to take advantage of the special scheme.

Moreover, according to the United Kingdom, undertakings benefitting from the measures represent only small competitors in the markets in which they operate.

Existing provisions in the area of the proposal

Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity.

Assessment of the measure under Article 19 of Directive 2003/96/EC

Specific policy considerations

Article 19(1), first subparagraph, of the Directive reads as follows:

"In addition to the provisions set out in the previous Articles, in particular in Articles 5, 15 and 17, the Council, acting unanimously on a proposal from the Commission, may authorise any Member State to introduce further exemptions or reductions for specific policy considerations."

The measure envisaged by the UK consists in reducing excise duty on motor fuels supplied in certain parts of its territory namely all the islands of the Inner and Outer Hebrides, the Northern Isles, the islands in the Clyde (all off the coast of Scotland), and the Isles of Scilly (off the south west coast of England). The aim is to bring pump prices in these territories closer to the UK average. The higher per unit costs and thus pump prices in these areas are due to higher transportation and distribution costs and lower economies of scale.

It can be concluded that the wish to apply a reduced excise duty rate on motor fuels in the areas concerned on account of their specific geographical conditions is based on specific policy considerations.

Consistency with the other policies and objectives of the Union

The aim of the measure is to partly counterbalance the higher per unit cost, and thus pump prices, of fuel in the islands concerned, through a direct duty relief at the point of sale.

The measure is limited to what is needed to this effect. In particular, the relief is confined to the (relatively small) amount of fuel sold on the islands.

Moreover, the amount of the relief remains below the additional costs of selling fuel in these regions and, by the same token, below the difference between the fuel prices applied there and those applied on the mainland.

In this regard, the Commission notes that the excise duty rate will be reduced by GBP 0,05 per litre of product. Yet, according to the information provided by the United Kingdom

authorities, the additional transportation costs for the territories covered are GBP 0,03 per litre higher than the UK average, and the costs of running gas stations are estimated to be higher resulting in premiums of approximately GBP 0,07 to 0,15 per litre, compared to the UK average of GBP 0,033 per litre.

As a result, the fiscal incentive to use energy efficiently is maintained at a level at least equal to the one prevailing on the mainland.

Finally, despite the relief, the tax burden borne by fuel consumed in the geographic areas concerned will remain well above the minimum levels of taxation set out in Directive 2003/96/EC.

It can thus be concluded that the measure is compatible with the health, environment, energy and transport policies of the Union.

Under the circumstances described, it also appears acceptable in view of the proper functioning of the internal market and the need to ensure fair competition. In particular, due to the insular nature of the areas to which it applies and the moderate reduction in the rate, it is not expected that it will lead to changes in fuel consumption, through the attraction of consumers from outside these areas.

Period of application of the measure and development of the EU framework on Energy Taxation

The Commission suggests that the period of application is set to the maximum allowed by Directive 2003/96/EC, i.e. six years. This period seems appropriate in order to allow the UK authorities to gather information to assess the results of the measure and provide businesses and consumers benefiting from the measure with a sufficient degree of certainty.

However, in order not to undermine future general developments of the existing legal framework, it is appropriate to provide that, should the Council, acting on the basis of Article 113 of the Treaty, introduce a modified general system for the taxation of energy products to which the present authorisation would not be adapted, this Decision shall expire on the day on which those modified rules become applicable.

More concretely, reference is made to the proposal submitted by the Commission on 13 April 2011 [COM(2011)169]. According to this proposal, energy taxation would be split into two components. This system would be different from the one of Directive 2003/96/EC as it currently stands and on which the present authorisation is based.

Should the Council adopt such a new system and should the Commission consider that the authorisation proposed herewith is still warranted, it would examine, positively and in a timely manner, any request from the UK for a similar authorisation adapted to that new system, so as to provide for the continuity intended by Article 2, paragraph 1, of the present proposal.

State Aid rules

After the reduction envisaged by the UK authorities, the tax rates on petrol and diesel in the regions concerned will still respect the minimum level of taxation pursuant to Article 7 of Directive 2003/96/EC. The measure therefore falls under the so-called General Block

Exemption Regulation (Regulation (EC) No 800/2008)² and is, by consequence, exempt from the prior notification requirement.

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

Consultation of interested parties

This proposal is based on a request made by the UK and concerns only this Member State.

Collection and use of expertise

There was no need for external expertise.

Impact assessment

This proposal concerns an authorisation for an individual Member State upon its own request.

3. LEGAL ELEMENTS OF THE PROPOSAL

The proposal aims at authorising the UK to derogate from the general provisions of Council Directive 2003/96/EC and to apply, within defined limits, differentiated levels of taxation to gas oil and unleaded petrol.

Legal basis

Article 19 of Council Directive 2003/96/EC.

Subsidiarity principle

The field of indirect taxation covered by Article 113 TFEU is not in itself within the exclusive competence of the Community within the meaning of Article 3 TFEU.

However, the exercise by Member States of their concurrent competences in this field is strictly circumscribed and limited by existing Community law. Pursuant to Article 19 of Directive 2003/96/EC, only the Council is empowered to authorise a Member State to introduce further exemptions or reductions within the meaning of that provision. Member States cannot substitute themselves for the Council.

The proposal therefore respects the principle of subsidiarity.

Proportionality principle

The proposal respects the principle of proportionality. The tax reduction does not exceed what is necessary to attain the objective in question.

² Commission Regulation (EC) No 800/2008 of 6 August 2008 declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty (General block exemption Regulation), OJ L 214, 9.8.2008.

Choice of instruments

Instrument proposed: Council Decision.

Article 19 of Directive 2003/96 makes provision for this type of measure only.

4. BUDGETARY IMPLICATION

The measure does not impose any financial and administrative burden on the Community.
The proposal therefore has no impact on the Community budget.

Proposal for a

COUNCIL DECISION

authorising the United Kingdom to apply reduced levels of taxation to motor fuels consumed on the islands of the Inner and Outer Hebrides, the Northern Isles, the islands in the Clyde and the Isles of Scilly, in accordance with Article 19 of Directive 2003/96/EC

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity³, and in particular Article 19(1) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) By letter of 23 March 2011 the UK requested authorisation to apply a reduced rate of excise duty on gas oil and unleaded petrol pursuant to Article 19 of Directive 2003/96/EC on the islands of the Inner and Outer Hebrides, the Northern Isles, the islands in the Clyde (all off the coast of Scotland); and the Isles of Scilly (off the south west coast of England).
- (2) In these areas, the prices of gas oil and unleaded petrol are higher than the average prices in the rest of the UK territory, placing local fuel consumers at a disadvantage. The price difference is due to additional per unit costs induced by the geographic location of the islands, their low population numbers and the delivery of relatively low volumes of fuel.
- (3) The tax reduction is no larger than what is necessary to compensate for the additional per unit costs borne by the consumers in the geographical areas concerned.
- (4) The reduced rates of taxation will be above the minimum rates laid down in Article 7 of Directive 2003/96/EC.
- (5) In view of the insular nature of the areas to which it applies and the moderate reduction in the rate, the measure will not give rise to any movement specifically linked to the supply of fuel.

³ OJ L 283, 31.10.2003, p. 51.

- (6) Consequently, the measure is acceptable from the point of view of the proper functioning of the internal market and of the need to ensure fair competition and it is compatible with the European Union's health, environment, energy and transport policies.
- (7) It follows from Article 19(2) of Directive 2003/96/EC that each authorisation granted under this Article must be strictly limited in time. In order to provide the businesses and consumers concerned with a sufficient degree of certainty, the authorisation is granted for a period of six years. However, in order not to undermine future general developments of the existing legal framework, it is appropriate to provide that, should the Council, acting on the basis of Article 113 of the Treaty, introduce a modified general system for the taxation of energy products to which the present authorisation would not be adapted, this Decision shall expire on the day on which the rules on this modified system become applicable.

HAS ADOPTED THIS DECISION:

Article 1

1. The United Kingdom is hereby authorised to apply reduced rates of taxation to unleaded petrol and gas oil in all the islands of the Inner and Outer Hebrides, the Northern Isles, the islands in the Clyde and the Isles of Scilly.

The reduction from the standard national rate of taxation for unleaded petrol or gas oil respectively shall be no greater than the additional cost of retail sales in these geographical areas, compared with the average cost incurred of retail sales in the United Kingdom and shall be no more than GBP 50 per 1 000 litres of product.

2. The reduced rates must comply with the requirements of Directive 2003/96/EC, and in particular with the minimum rates laid down in Article 7 thereof.

Article 2

This Decision shall be applicable from 1 November 2011 and shall expire on 31 October 2017.

However, should the Council, acting on the basis of Article 113 of the Treaty, introduce a modified general system for the taxation of energy products to which the present authorisation would not be adapted, this Decision shall expire on the day on which the rules on this modified system become applicable.

Article 3

This Decision is addressed to the United Kingdom of Great Britain and Northern Ireland.

Done at Brussels,

*For the Council
The President*