

ΚΡΑΤΙΚΗ ΕΝΙΣΧΥΣΗ

Πρόσκληση για την υποβολή παρατηρήσεων σύμφωνα με το άρθρο 6 παράγραφος 5 της απόφασης αριθ. 2496/96/ΕΚΑΧ της Επιτροπής, της 18ης Δεκεμβρίου 1996, σχετικά με τη θέσπιση κοινοτικών κανόνων για τις ενισχύσεις προς τη βιομηχανία σιδήρου και χάλυβα (ΕΕ L 338 της 28.12.1996), όσον αφορά την ενίσχυση C 19/2001 (ex N 197/2000) — εισφορά κλιματικών μεταβολών (ΕΚΑΧ)

(2001/C 191/03)

(Κείμενο που παρουσιάζει ενδιαφέρον για τον ΕΟΧ)

Με επιστολή της 5ης Απριλίου 2001, που αναδημοσιεύεται στην αυθεντική γλώσσα του κειμένου της επιστολής στις σελίδες που ακολουθούν την παρούσα περίληψη, η Επιτροπή κοινοποίησε στο Ηνωμένο Βασίλειο την απόφασή της να κινήσει τη διαδικασία που προβλέπεται στο άρθρο 6 παράγραφος 5 της απόφασης αριθ. 2496/ΕΚΑΧ της Επιτροπής για ένα τμήμα της ενίσχυσης που προαναφέρεται.

Η Επιτροπή αποφάσισε να μη διατυπώσει αντιρρήσεις σχετικά με ορισμένες άλλες ενισχύσεις, όπως περιγράφονται στην επιστολή που ακολουθεί την παρούσα περίληψη.

Τα ενδιαφερόμενα μέρη μπορούν να υποβάλουν τις παρατηρήσεις τους σχετικά με την ενίσχυση για την οποία η Επιτροπή κινεί τη διαδικασία μέσα σε ένα μήνα από την ημερομηνία δημοσίευσης της παρούσας περίληψης και της επιστολής που ακολουθεί, στην ακόλουθη διεύθυνση:

Ευρωπαϊκή Επιτροπή,
Γενική Διεύθυνση Ανταγωνισμού,
Διεύθυνση Η-1,
Rue de la Loi/Wetstraat, 200
B-1049 Βρυξέλλες
Φαξ (32-2) 296 12 42

Οι παρατηρήσεις αυτές θα κοινοποιηθούν στο Ηνωμένο Βασίλειο. Όσοι από τους ενδιαφερόμενους που υποβάλουν παρατηρήσεις επιθυμούν να παραμείνει απόρρητη η ταυτότητά τους μπορούν να το ζητήσουν γραπτώς διευκρινίζοντας τους λόγους του αιτήματός τους.

ΠΕΡΙΛΗΨΗ

1. Περιγραφή της ενίσχυσης για την οποία η Επιτροπή κινεί τη διαδικασία

Οι αρχές του Ηνωμένου Βασιλείου προτίθενται να καθιερώσουν από την 1η Απριλίου την εισφορά κλιματικών μεταβολών («Climate Change Levy — CCL») για την ενέργεια που χρησιμοποιείται για μη οικιακούς σκοπούς, οι οποίοι κατά το μεγαλύτερο μέρος καλύπτουν τη θέρμανση, τον φωτισμό και την κίνηση. Η εισφορά κλιματικών μεταβολών προωθεί την κυβερνητική πολιτική περιβαλλοντικής φορολογίας και αποτελεί το κεντρικό μέρος του κυβερνητικού προγράμματος για τις κλιματικές μεταβολές, το οποίο περιλαμβάνει τις κυβερνητικές προτάσεις για την ικανοποίηση του νομικά δεσμευτικού για το Ηνωμένο Βασίλειο στόχου της κατά 12,5 % μείωσης των εκπομπών αερίων του θερμοκηπίου (πρωτόκολλο του Κιότο) κατά μέσον όρο και για την περίοδο 2008-2012, καθώς και για την επιδίωξη του κυβερνητικού στόχου για μείωση στο εσωτερικό της χώρας των εκπομπών διοξειδίου του άνθρακα κατά 20 % μέχρι το 2010.

Τη νομική βάση για την εν λόγω εισφορά αποτελεί ο νόμος Finance Act 2000, τμήμα 30, κατηγορίες 6 και 7.

Τα πετρελαιοειδή δεν πρόκειται να ενταχθούν στο πεδίο εφαρμογής της εισφοράς, διότι ήδη υπόκεινται σε ειδικό φόρο κατανάλωσης, σύμφωνα με τις οδηγίες 92/81 ΕΟΚ και 92/82 ΕΟΚ του Συμβουλίου⁽¹⁾.

Τα ποσοστά της εν λόγω εισφοράς για την περίοδο 2001-2002 αναμένεται ότι θα έχουν ως εξής:

Ενεργειακό προϊόν	Ποσοστό εισφοράς (πένες ανά κιλοβάτώρα)
Ηλεκτρισμός	0,43
Φυσικό αέριο	0,15
Ανθρακας και άλλα στερεά καύσιμα	1,17 p/kg
Υγραέριο (LPG)	0,07

Προτείνεται τα ενεργειακά προϊόντα που εμπίπτουν στο πεδίο εφαρμογής της εισφοράς να απαλλάσσονται από αυτήν όταν το πρόσωπο στο οποίο παρέχεται το προϊόν προτίθεται να το χρησιμοποιήσει όχι ως καύσιμο. Η έννοια του καυσίμου δεν ορίζεται στο νόμο Finance Act 2000. Ωστόσο, οι αρχές του Ηνωμένου Βασιλείου υποστηρίζουν ότι ο νόμος αυτός καλύπτει διεξοδικά τη χρήση των ενεργειακών προϊόντων για κίνηση και θέρμανση. Προτείνεται, όταν ένα ενεργειακό προϊόν χρησιμοποιείται εν μέρει ως καύσιμο και εν μέρει για άλλες χρήσεις (μεικτή χρήση) να απαλλάσσεται πλήρως από την εισφορά.

Οι αρχές του Ηνωμένου Βασιλείου θεωρούν ότι η διάταξη αυτή αποτελεί μέτρο γενικής εφαρμογής, οπότε εντάσσεται στη φιλοσοφία του φορολογικού συστήματος. Σύμφωνα με το Ηνωμένο Βασίλειο, αυτή η διάταξη περί διττής χρήσης εφαρμόζεται για τον τομέα του χάλυβα, την παραγωγή αλουμινίου, σιδήρου, μολύβδου, χαλκού, ψευδαργύρου, συσσωρευτών και ορισμένων χημικών προϊόντων.

⁽¹⁾ ΕΕ L 316 της 31.10.1992, σ. 12 και 19.

2. Αξιολόγηση του μέτρου/της ενίσχυσης

α) Ύπαρξη ενίσχυσης κατά την έννοια του άρθρου 4 της συνθήκης ΕΚΑΧ

Η θέση του Ηνωμένου Βασιλείου είναι ότι η απαλλαγή της διττής χρήσης αποτελεί μέτρο γενικής εφαρμογής και δεν συνιστά κρατική ενίσχυση. Υποστηρίζει ότι η εισφορά CCL αποτελεί φόρο για τη χρήση ενεργειακών προϊόντων ως καυσίμων και ότι η απαλλαγή είναι σύμφωνη με την οδηγία 92/81/ΕΟΚ του Συμβουλίου, της 19ης Οκτωβρίου 1992, περί εναρμόνισης των διαρθρώσεων των ειδικών φόρων κατανάλωσης που επιβάλλονται στα πετρελαιοειδή⁽²⁾ («οδηγία πετρελαιοειδών»), καθώς και με την πρόταση οδηγίας του Συμβουλίου περί αναδιάρθρωσης του κοινοτικού πλαισίου φορολογίας των ενεργειακών προϊόντων⁽³⁾ («η πρόταση»), ενόσω μόνο η χρήση των ενεργειακών προϊόντων για θέρμανση και κίνηση εμπίπτει στο πεδίο εφαρμογής της εισφοράς.

Σύμφωνα με τις αρχές του Ηνωμένου Βασιλείου, η επέκταση της απαλλαγής και στις μεικτές χρήσεις αποσκοπεί στο να παράσχει βεβαιότητα και σαφήνεια στους φορολογούμενους προμηθευτές καυσίμων ως προς το αν ή όχι, βάσει επιστημονικών επιχειρημάτων, κάθε χρήση ενός προϊόντος από τον πελάτη απαλλάσσεται από την εισφορά. Οι ως άνω αρχές δεν θεωρούν ότι είναι εφικτό από τεχνική άποψη να προσδιορισθεί αντικειμενικά και με επαρκή ακρίβεια ο βαθμός χρήσης ενός ενεργειακού προϊόντος ως καυσίμου ή μη στο πλαίσιο ορισμένων κατεργασιών.

Η Επιτροπή θεωρεί ότι η απαλλαγή παρέχει στις δικαιούχους εταιρείες πρόνομο το οποίο χρηματοδοτείται με κρατικούς πόρους. Ως προς το αν η απαλλαγή αυτή αποτελεί μέτρο γενικής εφαρμογής, όπως υποστηρίζουν οι αρχές του Ηνωμένου Βασιλείου, ή συνιστά κρατική ενίσχυση, η Επιτροπή θεωρεί ότι είναι αναγκαίο να εκτιμηθεί αν οι επιπτώσεις θα απέβαιναν υπέρ ορισμένων επιχειρήσεων ή υπέρ της παραγωγής ορισμένων προϊόντων. Η Επιτροπή επισημαίνει ότι, σύμφωνα με τα στοιχεία που έχουν παρασχεθεί από τις αρχές του Ηνωμένου Βασιλείου, η απαλλαγή θα ευνοήσει την παραγωγή ορισμένων προϊόντων, και συγκεκριμένα ορισμένων μετάλλων (μεταξύ των οποίων είναι το αλουμίνιο, ο σίδηρος, ο μόλυβδος και ο χαλκός) αλλά και οπτιάνθρακα καθώς και συσσωρευτών και χημικών προϊόντων.

Η Επιτροπή παρατηρεί επίσης ότι στον τομέα του σιδήρου και χάλυβα, η απαλλαγή θα καλύψει τη χρήση, μεταξύ άλλων, κοκ στις ψυκαμίνους, καθώς και τις μεθόδους παραγωγής χάλυβα σε ηλεκτροκαμίνους. Τονίζει όμως ότι η απαλλαγή θα έχει ως αποτέλεσμα να απαλλάξει τους φορείς εκμετάλλευσης ψυκαμίνων από το φόρο σε μεγαλύτερη αναλογία της ενέργειας που καταναλώνεται στις ψυκαμίνους απ' ό,τι συμβαίνει για τους φορείς εκμετάλλευσης ηλεκτρικών ψυκαμίνων. Τονίζει εξάλλου ότι η Cogus είναι η δεσπόζουσα επιχείρηση της βιομηχανίας σιδήρου και χάλυβα στο Ηνωμένο Βασίλειο, ότι καταναλώνει 90-95 % της ενέργειας στο συγκεκριμένο τομέα και ότι χρησιμοποιεί τις ψυκαμίνους για το μεγαλύτερο τμήμα της παραγωγής της χάλυβα, ενώ ορισμένοι από τους ανταγωνιστές της χρησιμοποιούν ηλεκτρικές ψυκαμίνους. Η Επιτροπή, θεωρεί, κατά συνέπεια, ότι η απαλλαγή ευνοεί τη βιομηχανία σιδήρου και χάλυβα απαλλάσσοντας τον παραγωγό που κατέχει δεσπόζουσα θέση από σημαντικό μέρος του φόρου. Θεωρεί επιπλέον ότι στο εσωτερικό του τομέα σιδήρου και χάλυβα η απα-

λαγή ευνοεί μια ή περισσότερες επιχειρήσεις σε σχέση με άλλες, σε συνάρτηση με τον χρησιμοποιούμενο τρόπο παραγωγής.

Ως εκ τούτου, η Επιτροπή έχει αμφιβολίες ως προς το αν η απαλλαγή μπορεί να θεωρηθεί μέτρο γενικής εφαρμογής.

Η Επιτροπή επισημαίνει ότι πρέπει να εκτιμηθεί κατά πόσο η απαλλαγή μπορεί να αιτιολογηθεί με βάση τα χαρακτηριστικά και τη φιλοσοφία του φορολογικού συστήματος. Η Επιτροπή υπογραμμίζει επίσης την διαβεβαίωση των βρετανικών αρχών, σύμφωνα με την οποία η επιβολή της εισφοράς αποκλειστικά στην ενέργεια που χρησιμοποιείται ως καύσιμο είναι σύμφωνη με τις διατάξεις της «οδηγίας πετρελαιοειδών» και της πρότασης οδηγίας του Συμβουλίου περί αναδιάρθρωσης του κοινοτικού πλαισίου φορολογίας των ενεργειακών προϊόντων.

Η Επιτροπή παρατηρεί ότι η εισφορά κλιματικών μεταβολών αποτελεί φόρο για την ενέργεια που χρησιμοποιείται για μη οικιακούς σκοπούς, οι οποίοι κατά το μεγαλύτερο μέρος καλύπτουν τη θέρμανση, το φωτισμό και την κίνηση. Η εισφορά δεν επιβάλλεται σε καύσιμα που χρησιμοποιούνται για άλλους σκοπούς. Αυτός ο καθορισμός του πεδίου εφαρμογής ενός ενεργειακού φόρου, σύμφωνα με τον οποίο δεν φορολογούνται όλες οι χρήσεις των καυσίμων, μπορεί να ενταχθεί στη λογική ενός συστήματος όπως αυτό που ορίζεται στην οδηγία πετρελαιοειδών και στην πρόταση οδηγίας του Συμβουλίου περί αναδιάρθρωσης του κοινοτικού πλαισίου φορολογίας των ενεργειακών προϊόντων.

Εντούτοις, η προτεινόμενη απαλλαγή των καυσίμων διττής χρήσης υπερβαίνει το συγκεκριμένο καθορισμό του πεδίου εφαρμογής της εισφοράς.

Πρώτον, η απαλλαγή ενδέχεται να έχει ως αποτέλεσμα την άνιση μεταχείριση παρόμοιων καταστάσεων, στο μέτρο που ορισμένες μέθοδοι που συνεπάγονται διττή χρήση απαλλάσσονται από την εισφορά, ενώ δεν απαλλάσσονται άλλες οι οποίες θα μπορούσαν εξίσου να θεωρηθούν ότι συνεπάγονται διττή χρήση.

Δεύτερον, το Ηνωμένο Βασίλειο απαλλάσσει πλήρως από την εισφορά τα καύσιμα, ακόμη και αν χρησιμοποιούνται εν μέρει για μη ενεργειακούς σκοπούς, σύμφωνα με τον προαναφερόμενο καθορισμό.

Η Επιτροπή παρατηρεί ότι η πρόταση οδηγίας του Συμβουλίου περί αναδιάρθρωσης του κοινοτικού πλαισίου φορολογίας των ενεργειακών προϊόντων δεν έχει ακόμη τεθεί σε εφαρμογή και ότι δεν μπορεί να αποτελέσει αυτόματα αναφορά για να καθορισθεί η λογική και ο γενικός χαρακτήρας του φορολογικού καθεστώτος. Εντούτοις, η πρόταση μπορεί να παράσχει ορισμένες ενδείξεις για το κατά πόσο η διάταξη που αφορά τη διττή χρήση μπορεί να θεωρηθεί ως γενικό μέτρο, παρά το γεγονός ότι το άρθρο 13 παράγραφος 1, αφορά τα καύσιμα που χρησιμοποιούνται κατά κύριο λόγο για την χημική αναγωγή. Ωστόσο, η Επιτροπή έχει αμφιβολίες ως προς το ότι η απαλλαγή είναι πλήρως σύμφωνη με την πρόταση, καθώς δεν καλύπτει την ενέργεια που χρησιμοποιείται σε όλες τις μεταλλουργικές κατεργασίες, όπως θα απαιτούσε το άρθρο 13 παράγραφος 1 στοιχείο α) της πρότασης. Η Επιτροπή επισημαίνει ότι, σύμφωνα με τις αρχές του Ηνωμένου Βασιλείου, μεταλλουργική κατεργασία είναι εκείνη που καταλήγει στην παραγωγή ενός μετάλλου, π.χ. από σιδηρομετάλλευμα. Η Επιτροπή έχει αμφιβολίες ως προς το ότι η ερμηνεία αυτή είναι σύμφωνη με την έννοια της μεταλλουργικής κατεργασίας στην πρόταση. Για να ήταν η απαλλαγή σύμφωνη με την πρόταση, θα έπρεπε να απαλλάσσεται από την εισφορά η ενέργεια που χρησιμοποιείται σε όλες τις μεταλλουργικές κατεργασίες, και συγκεκριμένα σε κάθε μέθοδο παραγωγής μετάλλων.

⁽²⁾ ΕΕ L 316 της 31.10.1992, σ. 12.

⁽³⁾ ΕΕ L 139 της 6.5.1997, σ. 14.

Ακόμη, η Επιτροπή επισημαίνει το επιχείρημα του Ηνωμένου Βασιλείου ότι δεν είναι δυνατόν να προσδιορισθούν με ακρίβεια τα ποσοστά των ενεργειακών προϊόντων που χρησιμοποιούνται ως καύσιμα ή μη σε ορισμένες κατεργασίες, οπότε, για λόγους σαφήνειας και βεβαιότητας, είναι αναγκαία η πλήρης απαλλαγή των μεικτών χρήσεων από την εισφορά. Ωστόσο, η Επιτροπή έχει αμφιβολίες ως προς το ότι οι αρχές του Ηνωμένου Βασιλείου δεν είναι σε θέση να δημιουργήσουν έναν μηχανισμό με τον οποίο να προσδιορίζεται ο βαθμός χρήσης των ενεργειακών προϊόντων ως καυσίμων ή μη σε ορισμένες κατεργασίες και να επιβάλλεται η εισφορά ανάλογα.

Η Επιτροπή σημειώνει επίσης ότι, αν πρέπει να απαλλαγεί πλήρως η ενέργεια που χρησιμοποιείται για διττή χρήση, το αποτέλεσμα δεν θα ήταν ενδεχομένως σύμφωνο με το στόχο της εισφοράς που είναι η μείωση των εκπομπών CO₂.

β) Συμβατότητα της ενίσχυσης

Με την παραδοχή ότι η απαλλαγή για τη διττή χρήση καυσίμων συνιστά κρατική ενίσχυση, η Επιτροπή έχει αμφιβολίες ως προς τη συμβατότητα της ενίσχυσης αυτής με το κοινοτικό πλαίσιο σχετικά με τις κρατικές ενισχύσεις για την προστασία του περιβάλλοντος (ΕΕ C 72 της 10.4.1994, σ. 3):

1. Η Επιτροπή τονίζει ότι η διάταξη απαλλάσσει την κατανάλωση ενέργειας για ορισμένες κατεργασίες που συνεπάγονται υψηλή ενεργειακή ένταση, οι οποίες παράγουν σημαντικές εκπομπές CO₂, και αντιβαίνει συνεπώς στο γενικό στόχο της εισφοράς που είναι η μείωση των εκπομπών CO₂.
2. Η Επιτροπή διαπιστώνει εξάλλου ότι η απαλλαγή δεν είναι ούτε προσωρινή ούτε προοδευτικά μειούμενη.
3. Τονίζει ότι η απαλλαγή δεν χορηγείται υπό τον όρο της σύναψης συμφωνιών για την επίτευξη συγκεκριμένων στόχων προστασίας του περιβάλλοντος, ούτε υπόκειται η εισφορά σε όρους που έχουν το ίδιο αποτέλεσμα με συμφωνίες.
4. Το Ηνωμένο Βασίλειο δεν απέδειξε ότι οι επιχειρήσεις που είναι επιλέξιμες για απαλλαγή πρέπει εντούτοις να καταβάλλουν σημαντικό μέρος του εθνικού φόρου και ότι η απαλλαγή δεν χρησιμεύει αποκλειστικά για την αντιστάθμιση του επιπρόσθετου κόστους παραγωγής.

Για τους προαναφερόμενους λόγους, η Επιτροπή εκφράζει αμφιβολίες για το κατά πόσο η απαλλαγή της διττής χρήσης είναι συμβατή με τις κατευθυντήριες.

ΚΕΙΜΕΝΟ ΤΗΣ ΕΠΙΣΤΟΛΗΣ

«1. The Commission wishes to inform the United Kingdom that, having examined the information supplied by your authorities on the measures referred to above, it has decided:

- not to raise objections to the tax exemptions from the climate change levy for electricity from renewable sources, for CHP, and on the tax reductions for companies entering into climate change agreements,

— to initiate the procedure laid down in Article 6(5) of Commission Decision 2496/96/ECSC of 18 December 1996 establishing Community rules for State aid to the steel industry on the tax exemption for dual use fuels.

1. PROCEDURE

2. By letter dated 14 February 2000, the United Kingdom authorities notified the climate change levy ('CCL') to the Commission. This notification is registered as N 123/2000 ('the EC notification'). By letter dated 5 April, the United Kingdom authorities notified the CCL in accordance with Decision 2496/96/ECSC⁽⁴⁾ of 18 December 1996 establishing Community rules for State aid to the steel industry ('the Steel Aid Code'). Since the notification, the Commission has received additional information from, and met with, the United Kingdom authorities several times.

2. BACKGROUND

2.1. Description of the CCL

3. The UK authorities intend to introduce the CCL on the non-domestic use of energy, which is broadly the use as heating fuel or for motive power. The climate change levy package takes forward the United Kingdom Government's policy on environmental taxation and is a central part of the United Kingdom Government's climate change programme, which sets out the Government's proposals for meeting the UK's legally binding target of a 12,5 % reduction in greenhouse gas emissions (Kyoto Protocol) and for moving towards the United Kingdom Government's domestic goal of a 20 % reduction in carbon dioxide emissions by 2010.
4. This new levy is introduced in order to meet the UK's international greenhouse gas abatement obligations and to progress towards the domestic goal of reducing CO₂ emissions. This new environmental Instrument is intended to deliver absolute carbon/energy reductions in the steel sector of 200 000 tonnes per year, by 2010.
5. The legal base of the CCL is the Finance Act 2000, Section 30 and Schedules 6 and 7, which received Royal Assent on 28 July 2000. The levy is scheduled to come into effect on 1 April 2001.
6. The CCL will cover non-domestic use of primary and/or secondary fuel for lighting, heating, motive power and power for appliances by consumers in industry (including fuel industries), commerce, agriculture, public administration and other services. The tax will be levied at the point of sale to the final consumer.
7. In order to avoid double taxation the levy will not apply where a taxable commodity is used to produce another taxable commodity.

⁽⁴⁾ OJ L 338, 28.12.1996, p. 42

8. Mineral oils will not be brought within the scope of the tax because they are already subject to excise duty in accordance with Council Directives 92/81/EEC and 92/82/EEC ⁽⁵⁾.
9. The levy will apply also to imported commodities when used in the UK. It will not be applied to commodities which are intended to be used outside the UK.
10. The rates of levy in 2001/02 are expected to be:

Energy product	Levy rate (pence per kilowatt hour)
Electricity	0,43
Gas	0,15
Coal and other solid fuels	0,15
Liquified petroleum gas	0,07

2.2. Description of the reductions/exemptions

11. The UK Government notified several exemptions or reduced rates of the tax. These are:
 - reductions for facilities entering into climate change agreements,
 - exemption for electricity generated by good quality CHP,
 - exemption for electricity generated from renewable sources,
 - exemptions for dual uses.
12. The UK Government intends to enter into a climate change agreement with the steel industry until 2013, that is a period for tax benefits of 12 years. However, the United Kingdom authorities seek approval of the tax reduction linked to climate change agreements for 10 years. Also the legal provisions for the other exemptions are by nature unlimited, but notified for a period of 10 years.

2.2.1. Exemption for outputs of good quality combined heat and power plants (CHP)

13. CHP makes significant fuel, cost and emissions savings over conventional, separate forms of power generation and heat-only boilers. The generation and supply of electricity from power stations is generally at an efficiency in the range 25 to 50 %, based on the gross calorific value (GCV) of the fuel and including transmission and distribution losses. This means that 50 to 75 % of the energy content of the fuel is not usefully employed. This unutilised energy content is rejected as heat directly to the atmosphere or into seas or rivers. The generation of electricity and the recovery of heat in

CHP schemes typically achieve overall efficiencies of 60 to 80 % and sometimes more.

14. Unlike conventional methods of electricity generation, some of the heat cogenerated in a CHP scheme is used typically in industrial processes or for heating and hot water in buildings. The heat used in this way displaces heat that would otherwise have to be supplied by burning additional fuel and so leads directly to a reduction in emissions. The development of CHP provides a particularly cost-effective approach for reducing CO₂ emissions.
15. The UK Government has a target of increasing the installed capacity of CHP from its current level of 4,5 GW to at least 10 GW by 2010. This will lead to additional reductions in carbon dioxide emissions of about 4 million tonnes per annum.
16. However, in the absence of any incentives to promote the development of CHP, it is estimated that CHP capacity will only increase to 7 GW by 2010.
17. The economic viability of CHP is critically dependent on the differential between electricity and gas prices. Over the last five years, electricity prices have fallen by 3 % in real terms, while gas prices have increased by 30 %. These factors together have resulted in an extremely adverse effect on CHP economics. Without any exemption for CHP, the climate change levy (CCL) will exacerbate this problem, as it will increase gas prices proportionately more than electricity prices.
18. It is important to recognise that the cost-effectiveness of CHP is marginal in many instances. The proposed CHP exemption will help to tip the balance in favour of investment of CHP in many of these cases. The exemption will address market imperfections and help to counteract the effect of the trend in energy prices over recent years, which has reduced the cost-effectiveness of many CHP schemes. These issues apply just as much in the business sector as within any other sector of the economy.
19. The United Kingdom authorities have therefore proposed that good quality CHP should be exempt from the climate change levy. The definition of good quality CHP ⁽⁶⁾ is based on threshold criteria, which must be met or exceeded in order for the whole of the scheme to qualify as 'good quality'.
20. Threshold criteria are set for quality index and power efficiency ⁽⁷⁾.

⁽⁶⁾ Established by the UK's CHP quality assurance programme (CHPQA).

⁽⁷⁾ Power efficiency is the proportion of input energy which is converted to electrical or mechanical power, whilst the quality index is a measure of the overall efficiency of a CHP scheme, taking account of the efficiency of production of both heat and power. In the definition of the quality index, the quantity of power produced is weighted relative to the quantity of heat, given the greater energy and environmental cost involved in generating power.

⁽⁵⁾ OJ L 316, 31.10.1992 pp. 12 and 19.

21. The CHPQA programme provides for a rigorous assessment of the energy efficiency and environmental performance of CHP schemes. It is much more rigorous in this respect than simply assessing the overall efficiency of a CHP scheme. In particular, the weighting given to the efficiency of power generation in the assessment procedures recognises the environmental benefits of using CHP rather than conventional energy generation technologies. In comparison, a conventional boiler system with a small amount of electrical power generation could achieve relatively high 'headline' energy conversion efficiencies, but offers much reduced environmental benefit compared to good quality CHP.

The extent of the exemption on fuel input and energy output depends on the degree of delivering good quality CHP

22. A scheme meeting or exceeding the threshold quality index and power efficiency criteria will qualify as good quality CHP for its entire capacity, annual energy inputs and annual energy outputs.

23. A CHP scheme that does not meet the threshold criteria for good quality CHP will not be eligible for CCL exemption on its entire fuel input or power output, but only for a part of it, corresponding to the good quality portion of the overall CHP scheme.

Regular monitoring

24. It is a requirement of CHPQA that CHP schemes are assessed against the standard each year to ensure continued performance in relation to the good quality CHP threshold criteria. If there is a change in the level of performance, eligibility for exemption from the climate change levy shall be adjusted appropriately.

2.2.2. **Exemption for electricity generated from renewable sources**

25. The United Kingdom authorities propose to exempt from the levy electricity sold by electricity suppliers which can be matched with purchases from an eligible generator. The technologies eligible for exemption will be: wind energy, hydro power up to 10 MW, tidal power, wave energy, photovoltaics, photoconversion, geothermal hot dry rock, geothermal aquifers, the biodegradable fraction of municipal and industrial waste, landfill gas, agriculture and forestry waste, energy crops and sewage gas.

26. Suppliers will be able to exempt sales of electricity from the levy if the supplier has contracted with a generator or generators of eligible renewable electricity to purchase such electricity; the supplier agrees to independent audit

by the authorities; and the generator(s) agree to the same conditions.

27. This exemption is also applicable to imported electricity from renewable sources.

2.2.3. **Reductions for facilities entering into climate change agreements**

28. The United Kingdom authorities also recognise the need for special consideration to be given to the position of energy-intensive industries given their energy usage, the requirements of the integrated pollution prevention and control regime and their exposure to international competition. Consequently, the Government will provide an 80 % discount from the levy for those sectors that can agree targets for improving their energy efficiency or reducing carbon emissions ('agreements').

29. The United Kingdom authorities define an 'energy intensive' sector as one which operates processes which will be covered by Annex I of Council Directive 96/61/EC concerning integrated pollution prevention and control⁽⁸⁾. This criterion applies throughout the UK and has been chosen because sites operating such processes will be subject to a legal requirement to use energy efficiency — other sites are not subject to this requirement. Small sites which fall below PPC size thresholds (with the exception of thresholds relating to combustion plant), but which would otherwise be covered by the proposed regulations, will also be eligible for the relevant sector agreement.

30. The agreements cover a period of twelve years (2001 to 2013). The UK Government seeks Commission approval for a period of 10 years and confirmed that it would terminate the agreements with sectors after 10 years if no Commission decision allows their prolongation (commitment see above).

31. Two options are envisaged for the form of these agreements:

— sector level agreements ('umbrella agreements') between the industrial sector associations⁽⁹⁾ and the relevant Secretary of State under which sector targets would be set. Individual entities participating in the scheme would additionally agree individual targets and would enter into separate agreements with the Secretary of State ('participation agreements'). The reduction in levy would be available either if the sector as a whole met its target or, failing that, if an individual entity met its target (in which case, only that individual entity would qualify for a levy reduction),

⁽⁸⁾ These sites and installations will, in due course, be subject to a regulatory requirement, in terms of having to operate in an energy efficient manner. The activities in question include activities of energy industries, production and processing of metals, mineral industry, chemical industry, waste management and some other activities.

⁽⁹⁾ Or an organisation especially set up by the sector association for this purpose.

- sector level agreement between the Government and the sector association, but in which the participant level agreement is between the sector association and each participant in respect of their facility or facilities. The UK Government has to agree the model agreement used by the sector and will also approve each individual agreement before they will be permitted to come into effect.
32. The CCL is only payable by those operators carrying out economic activity in the United Kingdom, all of whom are equally eligible to enter into climate change agreements, no matter what their origin. Any undertaking setting up a new establishment in the UK will be eligible to enter into an agreement on equivalent terms to those agreed with their sector in existing agreements. Provided that an equivalent target can be agreed for qualifying activities, the UK authorities will include the establishment within the relevant sectoral agreement and the establishment will become eligible for the 80 % discount.
33. The targets consist of quantitative energy efficiency and carbon emissions reductions outcomes, defined in absolute terms or per unit output. Milestone targets are set for two-year periods.
34. Targets are reviewed twice, in 2004 and 2008 in order to ensure that they continue to represent the potential for cost-effective energy savings taken into account of any changes in technical or market circumstances.
35. The UK government will make targets transparent by reporting to the UK Parliament, and as appropriate, to the devolved legislatures.
36. Tolerance bands allow small overshoots of the milestone target to be accepted for those participants who have otherwise demonstrated satisfactory performance in view of additional qualitative criteria (such as good environmental management). The tolerance band facility will not be available after the third milestone.
37. Over the period envisaged for the agreements participants will wish to be free to choose whether to respond to market demand for new products or a different mix of products from that on which their original energy/CO₂ savings targets were based. This may lead to an increase or decrease of energy per unit of production. The scheme foresees an adjustment procedure in order to adapt the targets to a change in the product mix until 2006. A potential extension of this possibility will depend on the successful introduction of a carbon emission trading scheme. Participants with absolute targets would not be permitted to use this procedure. The product mix approach is not available for those participants who choose a tolerance band approach.
38. If the beneficiary is unable to meet a milestone target due to a relevant constraint or requirement, progress made towards meeting the targets is taken as being satisfactory. These constraints or requirements are:
- constraint or requirements imposed by or under town and country planning, environmental, health and safety or food hygiene legislation,
 - certain constraints or requirements imposed on the construction or operation of a CHP plant under the Energy Act 1976 or Electricity Act 1989,
 - unforeseen major disruptions to energy supply of more than 240 consecutive hours.
39. The scheme foresees the possibility of meeting agreed targets by carbon emission trading entities committed in a climate change agreement. Emission trading should later on be possible also with participants in a wider emission trading scheme, subject to approval of such a linkage by the Commission. Details of such a scheme are not yet available. The UK authorities undertake that unless the Commission agrees otherwise, carbon trading will only be allowed between participants in climate change agreements, and then only where the selling party has verified surplus carbon to sell. This restriction is contained in the climate change agreements.
40. Recuperation: a beneficiary who does not meet a milestone target will lose the levy reduction for the next two years. If he then meets the next milestone target, he will be allowed the levy reduction for the following two years.
41. While the mechanism of such a 'forward penalty' is different from a clawback provision for levy rebates received over the past years, the UK government claims that the risk of losing the levy reduction for the future is a stronger incentive for beneficiaries to meet their targets than a proportionate clawback mechanism would provide.
42. For the last milestone target, for which the prospective loss of levy reduction may not create a sufficient incentive, the UK authorities have undertaken that they will introduce a provision to recover levy reduction granted to participants for the last two years of a ten-year State aid approval in proportion to the extent, if any, to which their last milestone targets were not met. The UK authorities consider it probable that this provision will require a change to the legislation, which will be brought forward at the appropriate time. As yet the framework for recovery has not been settled, but will be considered in the prevailing circumstances.

43. When negotiating the targets with the sectors concerned, the principal benchmark used by the UK authorities to assess whether these targets are demanding is the UK study of the potential for savings achievable through the implementation of all energy-saving measures which are cost-effective⁽¹⁰⁾.
44. The United Kingdom authorities have concluded an umbrella agreement with the UK Steel Association ('the Agreement'), that includes some specific features, reflecting the dominance of Corus UK Ltd ('Corus'), in the sector. According to the United Kingdom authorities, the cost of the Agreement to the United Kingdom authorities, in terms of lost revenue, is estimated to be GBP 90 million. Corus is a primary steel producer and accounts for about 90 to 95 % of total energy consumption in the sector.
45. The Agreement sets reduction targets over two phases. The first phase of the target profile runs from the energy consumption level for 1997 to 2005, over which period the target reduction is 7,45 %. From 2005 to 2010, a further energy consumption reduction of 2,55 % has been agreed. These targets and the biannual milestone targets will be subject to the mandatory reviews at 2004 and 2008. According to the United Kingdom authorities the total carbon savings under the Agreement will be 200 000 crude tonnes.
46. The Agreement includes special features including restrictions on the possibility of Corus selling carbon emission credits should it meet its energy consumption targets. Given that one of the features of the Agreement is that energy reduction targets are measured at the sectoral level, it also provides for the adjustment of the target sector, if Corus' energy use falls below the 2002 and 2004 target levels, so as to ensure that all steel producers participating in the Agreement will have to reduce energy consumption.
47. Companies will not be allowed to receive aid under this scheme and also other aid for the investments necessary to fulfil the Agreement. They can, however, benefit from enhanced capital allowances for energy efficient investment, a measure which does not constitute State aid under Article 4(c) of the ECSC Treaty⁽¹¹⁾.
48. The UK authorities undertake to provide the Commission with a progress report after each two-year review.

2.2.4. *Exemption for dual use fuels*

49. It is proposed that energy products falling within the scope of the levy will be exempt from it where the person to whom the product is supplied intends to cause it to be used otherwise than as fuel. The notion

⁽¹⁰⁾ The study has been published as 'Industrial sector CO₂ emissions: projections and indicators for the UK 1990 to 2020, April 1999' (EPSC 20616001/Z/1). The assessment of the potential savings, sector by sector, has assumed unlimited availability of capital and management time and therefore is an upper potential limit with known technologies.

⁽¹¹⁾ N 797/2000, Commission Decision of 13 February 2001.

of fuel is not defined in the Finance Act 2000. However, according to the United Kingdom authorities it broadly covers use of energy products for motor and heating purposes. It is proposed that where an energy product is used for partly fuel and partly non-fuel purposes (mixed uses) it will be fully exempt from the levy.

50. The United Kingdom authorities consider this provision as a general measure, and as part of the logic of the tax system. According to the United Kingdom, this dual use provision applies to the steel sector. In particular, it will cover the use of coke and other materials in the steel production process in the blast furnace and the electric arc furnace. The cost of this exemption to the United Kingdom Government, in terms of lost revenue, and in addition to the cost of the reductions granted under the terms of the Agreement, is estimated to be GBP 18 million.

3. ASSESSMENT

51. The notified measures, in so far as they affect the steel sector, fall to be examined under Article 4(c) of the ECSC Treaty, the Steel aid Code and Protocol 14 to the EEA. The introduction of environmental taxes by means of taxes on the consumption of electricity, fuel, mineral oil and gas are not as such caught by Article 4(c) of the ECSC Treaty in so far as they are general measures which do not favour particular firms or sectors of industry. Exceptions to a general tax, reduced tariffs and refunds from the tax do fall under the scope of Article 4(c) of the ECSC Treaty if they are targeted at certain firms or sectors of the ECSC steel industry, and without these exemptions being justified by the nature or general scheme of the system (see the principles set out in Commission notice on the application of the State aid rules to measures relating to direct business taxation, OJ C 384, 10.12.1998, p. 3, point 13 et seq.).

3.1. **Existence of aid**

3.1.1. ***Exemption for outputs of good quality (GQ) combined heat and power plants (CHP)***

52. The benefits and beneficiaries of the exemption are assessed by comparing (1) the treatment of a GQ CHP system, respectively the qualifying portions of it, with the electricity production from conventional sources and (2) by comparing heat or steam production in GQ CHP with conventional heat or steam production.
53. Operators of GQ CHP systems do not pay levy on the input fuel. This is in line with the general rule of the tax law, which does not tax the input fuel for electricity production in order to avoid double taxation.

I. **Operators of GQ CHP systems do not pay levy on the electricity they produce from a GQ CHP for their own use**

II. **Known end-users do not pay levy on electricity they purchase from a GQ CHP for their own use**

54. This gives operators of GQ CHP systems an advantage compared to conventional power generators who pay levy on electricity used on site and gives known end-users an advantage compared to end-users who buy electricity from the grid for their own use. This relieves them of charges that are normally borne from their budgets and gives the recipient firms an advantage over other firms. The advantage is granted through State resources as the State suffers a loss of tax revenues. The recipients exercise an economic activity on markets on which there is or could be trade between Member States or on which firms from other Member States might wish to establish themselves. The scheme thereby distorts or threatens to distort competition and could affect trade between Member States.
55. The Commission assessed in particular if the exemption (a) is aid to certain undertakings or (b) is aid to the production of certain goods.

I. Operators of GQ CHP systems

(a) *Does the exemption constitute aid to certain undertakings?*

56. The exemption is applied in all of the UK, granting automatic rights if objective quality criteria are fulfilled. The exemption for GQ CHP applies to all autogenerator CHP systems, independent of their type or size.
57. CHP is technology to increase energy efficiency in the context of a wide variety of economic activities. It is strongly used in the manufacturing sectors, in so different subsectors as refineries, chemical industry; paper and printing; food products, beverages and tobacco; metal products; machinery; equipment; mining and agglomeration of solid fuels; extraction of crude oil and natural gas; coke ovens; extraction and processing of nuclear fuels; iron and steel industry; non-ferrous metals; non-metallic mineral products extraction; textile; clothing; and leather. It is also used in other industrial branches, in transport, in the service sector and for public supply (district heating).
58. Thus all companies throughout a wide range of sectors of the economy are beneficiaries, independent of their size, location or economic activity. The criteria for defining 'GQ' CHP are objective and not designed in a way that would limit the benefit of the exemption to specific sectors. The majority of existing CHP systems already fulfill the standard. Stations not yet fulfilling the standard can upgrade to fulfill the criteria at least for a considerable portion of their production.

(b) *Is 'GQ CHP electricity' a specific product?*

59. The product 'GQ CHP electricity' can be produced by a large number of companies in various sectors. In most of these sectors, CHP is not used to produce electricity as a core product of the business, but the technology is used

to produce the different products of the companies more efficiently, by increasing the energy efficiency of the production process. In the case of most of the GQ CHP operators, 'GQ CHP electricity' is not a specific product.

60. This may be different for a certain type of CHP system operators, namely power stations, using CHP technology for producing electricity to feed into the grid⁽¹²⁾. For such companies, the production of electricity is their core business, and the electricity produced is in direct competition with the same product from conventional electricity producers. However, electricity from CHP systems is not exempt, if it is sold via the grid. The exemption includes only GQ CHP electricity used on site. With respect to this electricity, CHP power stations are in the same situation as any other autogenerator in any other sector of the economy, who produces QG CHP for use on site.
61. Therefore, it can be concluded that the exemption for good quality CHP electricity used on site is not selective.

II. Known end-users do not pay levy on electricity they purchase from a GQ CHP for their own use

62. Known end-users are users, whose main business is not the production of heat or power. They could produce heat and power for use on their own site, but outsource this production (because it is not their core business) to a separate entity delivering mainly to a group of known end-users (closed system). Known end users are not 'formally' producing their own power, but practically they are in the same situation as an autogenerator, who produces power for use on site. It should also be noted that such 'closed systems' are comparable to a 'use on site situation' as regards the energy efficiency of electricity transfer compared to electricity transfer via the grid.
63. The Commission considers that the same arguments apply as under point I (use of CHP as technology available throughout the sectors) and that the measure is not selective.
64. Operators of GQ CHP do not pay levy on input fuels to produce heat. This favours them in comparison to the conventional production of heat, where the input fuel is taxed. Again, the measure does not favour certain undertakings, as CHP is a technology available in a wide range of sectors.

⁽¹²⁾ In its decision on a temporary tax exemption for certain combined cycle power plants in the context of the continuation of the ecological tax reform in Germany (SG(2000) D109283 of 14 December 2000), the Commission argued that 'the relevant gas and steam turbine plants are being used quite predominantly to generate electricity for feeding into the grid. The technology (CHPs excluding heat extraction) is not one which can be used virtually indiscriminately in all sorts of firms in all branches of industry. Since it can accordingly be assumed that the effects of the tax exemption will be felt, if not exclusively, then at least quite predominantly in a certain sector, the measure favours certain undertakings or the production of certain goods within the meaning of Article 87(1).' In fact there were only very few stations using this type of technology in Germany.

65. The Commission therefore concludes that the exemption on CHP does not constitute State aid according to Article 4 of the ECSC Treaty.

3.1.2. *Exemption for electricity generated from renewable sources*

66. Firms purchasing electricity generated from renewable sources are fully exempt from the levy on the electricity. This relieves them of charges that are normally borne from their budgets and gives the recipient firms an advantage over other firms. The advantage is granted through State resources as the State suffers a loss of tax revenues. The recipients exercise an economic activity on markets on which there is or could be trade between Member States or on which firms from other Member States might wish to establish themselves. The scheme thereby distorts or threatens to distort competition and could affect trade between Member States. However, any company in any sector of the economy is able to purchase electricity from renewable sources. Thus, the tax exemption does not favour certain undertakings or the production of certain goods and is therefore not selective.

67. However it has to be also considered that the exemption will favour at the same time the generators of electricity from renewable sources feeding the electricity into the grid. The Commission notes, however, that there are no such ECSC companies feeding electricity into the grid. Consequently, this potential benefit does not fall to be considered in this Decision.

3.1.3. *Reductions for facilities entering into climate change agreements*

68. Firms entering into the Agreement are exempted for 80 % of the levy. This relieves them of charges that are normally borne from their budgets and gives the recipient firms an advantage over other firms. The advantage is granted through State resources as the State suffers a loss of tax revenues. The recipients exercise an economic activity on markets on which there is or could be trade between Member States or on which firms from other Member States might wish to establish themselves. The scheme thereby distorts or threatens to distort competition and could affect trade between Member States. Only companies fulfilling specific criteria can enter into the Agreements. Thus, the tax exemption favours certain undertakings or the production of certain goods and is therefore selective. It is not a measure which would be in the nature of the tax law.

69. The levy reduction for companies entering into the Agreements therefore constitutes State aid under Article 4 of the ECSC Treaty.

3.1.4. *Dual-use exemption*

70. The United Kingdom's position is that the dual-use exemption is a general measure that does not constitute

State aid. They claim that the CCL is a tax imposed on the use of energy products used as fuel and that the exemption is in line with Council Directive 92/81/EEC of 19 October 1992 on the harmonisation of the structures of excise duties on mineral oils⁽¹³⁾ ('the Mineral Oils Directive') as well as the proposal for a Council Directive restructuring the Community framework for the taxation of energy products⁽¹⁴⁾ ('the proposal'), in so far as only the use of energy products for motor and heating purposes fall within its scope.

71. According to the United Kingdom authorities, the purpose of the extension of this exemption to mixed uses is to provide certainty and clarity for the taxpayer, who is the fuel supplier, as to whether or not, on the basis of scientific advice, any use of a commodity by the customer is exempt from the levy. The United Kingdom authorities do not consider it to be technically feasible to objectively apportion with sufficient accuracy the fuel and non-fuel uses of energy products within certain processes.

72. The Commission considers that the exemption gives the benefiting companies an advantage, which is financed through State resources. In assessing whether this exemption is a general measure, as the United Kingdom authorities claim, or whether it constitutes State aid, the Commission considers it necessary to assess whether the effects would favour certain undertakings or the production of certain goods. The Commission notes that, according to the information provided by the United Kingdom authorities, the exemption will favour the production of certain goods, namely some metals (including aluminium, iron, lead, copper and coke) as well as batteries and some chemicals. The Commission therefore has doubts that the exemption can be considered as a general measure.

73. The Commission further notes that within the steel sector, the exemption will cover the use of, among other materials, coke in the blast furnace as well as the electric arc furnace steel production methods. The Commission notes however that the effect of the exemption will be to relieve blast furnace operators of the imposition of the levy on a higher proportion of energy consumed/input into the furnace than is the case for electric arc furnace operators. The Commission notes that Corus is the dominant company in the steel production sector in the United Kingdom, that it consumes 90 % to 95 % of energy in the sector and that it uses blast furnaces for the majority of its steel production, whereas certain of its competitors use electric arc furnaces for the production of steel. The Commission therefore considers that, the exemption favours the steel production industry by relieving the heavily dominant producer of much of the CCL. The Commission further considers that within the steel production sector the exemption favours one or more undertakings over others, depending upon the production method employed.

⁽¹³⁾ OJ L 316, 31.10.1992, p. 12.

⁽¹⁴⁾ OJ C 139, 6.5.1997, p. 14.

74. The Commission therefore has doubts that the exemption can be considered as a general measure.
75. The Commission notes that it falls to be assessed whether the exemption can be justified on the basis of the nature and logic of the tax system. The Commission notes the claim made by the United Kingdom authorities that the imposition of the levy solely on energy used for fuel is consistent with the provisions of the Mineral Oils Directive and the proposal for a Council Directive restructuring the Community framework for the taxation of energy products.
76. The Commission notes that the climate change levy is a tax on the non-domestic use of energy, which broadly covers use as heating fuel, lighting or for motive power. The levy will not apply to fuels used for other than these purposes. Such a definition of the scope of an energy tax, whereby not all uses of fuels are taxed, may be in the logic of a system such as that established in the Mineral Oils Directive and in the proposal for a Council Directive restructuring the Community framework for the taxation of energy products.
77. However, the proposed exemption for dual-use fuels goes beyond such a definition of the scope of the levy.
78. Firstly, the exemption may not treat comparable situations equally, in so far as some dual-use processes are exempt from the levy, while other processes, which may also fall to be considered as dual use, are not exempted.
79. Secondly, the UK exempts fuels entirely from the levy, even if they are only partially used for non-energy purposes as defined above.
80. The Commission notes that the proposal for a Council Directive restructuring the Community framework for the taxation of energy products is not in force and cannot be automatically relied upon as a reference point to establish the logic and general nature of the tax system. However, it may provide some indication of whether the dual-use provision can be considered as a general measure, although Article 13(1) refers to fuels used *principally* for the purposes of chemical reduction. The Commission has doubts, however, that the exemption is fully consistent with the proposal, as it does not extend to energy used in all *metallurgical* processes, as would be required under Article 13(1)(a) of the proposal. The Commission notes that according to the United Kingdom authorities, a *metallurgical* process is a process which results in the production of metal, for example, from ore. The Commission has doubts that this interpretation is consistent with the notion of *metallurgical* process in the proposal. In order to be consistent with the proposal, it appears that energy used in all *metallurgical* processes, namely in any metal production process, should be exempt from the levy.
81. The Commission further notes the United Kingdom's claim that it is not possible to apportion the fuel/non-fuel-use amounts of energy products in certain processes with accuracy; and that for reasons of clarity and certainty, a full exemption from the levy is necessary for mixed uses. The Commission has doubts, however, that the United Kingdom authorities cannot establish a mechanism whereby an estimation of fuel/non-fuel uses for certain processes can be made and levy imposed accordingly.
82. The Commission further notes that, if the energy part in the dual use were to be fully exempted, the result may not be in line with the objective of the levy to reduce CO₂ emissions.
83. For the reasons given above, the Commission has doubts that the exemption for energy products used for purposes other than as fuel can be considered as a general measure and not as State aid.
- ### 3.2. Legality of the aid
84. By notifying its intention to introduce the tax scheme, the UK has complied with its obligation under Article 6 of the Steel Aid Code to inform the Commission, in sufficient time to enable the latter to submit its comments, of any plans to grant or alter aid.
- ### 3.3. Compatibility of the aid
85. Article 4(c) of the ECSC Treaty recognises as incompatible with the common market and prohibits subsidies or aid granted by States in any form whatsoever. On the basis of Article 95 of the ECSC Treaty the Commission adopted in 1996 the Steel Aid Code which provides, on the basis of certain conditions, derogations from this strict prohibition.
86. Under Article 3 of the Steel Aid Code the Commission assesses environmental aid in accordance with the material rules laid down in the Community guidelines on State aid for environmental protection⁽¹⁵⁾ ('the guidelines') and in conformity with the criteria outlined in the Annex to the Steel Aid Code. This Annex only applies to investment aid that would benefit the environment. As such aid does not form part of the notified scheme, the rules in the Annex do not apply to this case.
87. According to point 3.4 of the guidelines, temporary relief from new environmental taxes may be authorised where it is necessary to offset losses in competitiveness, particularly at international level. A further factor to be taken into account is what firms concerned have to do in return, to reduce their pollution. According to point 3.4 such aid must only compensate for extra production costs by comparison with traditional costs, and should be temporary and in principle regressive.

⁽¹⁵⁾ OJ C 72, 10.3.1994.

3.3.1. Tax reductions for companies entering into climate change agreements

88. The measures fall in the scope of application of the guidelines because the objective of the law is environmental protection. It is intended to reduce energy consumption through increase of energy taxation.
89. The reduction of energy consumption is a common goal of the environmental policy of the Community and its Member States. The scheme is in accordance with the objectives of the Community's environmental policy, laid down in Article 174 EC. The taxation of energy consumption is one of the means to achieve this goal.
90. As far as the measures concern relief from new environmental taxes, point 3.4. of the environmental guidelines acknowledges that the introduction of such taxes can involve State aid because some firms may not be able to cope with the extra financial burden in the short term, and may therefore require temporary relief. The criteria for approving such aid, which is operating aid, are that it must only compensate for extra production costs by comparison with traditional costs, and should be temporary and in principle degressive, so as to provide an incentive for reducing pollution or introducing more efficient uses of resources more quickly. A further factor to be taken into account is what the firms concerned have to do in return to reduce their pollution.
91. The climate change levy is a new environmental tax on products in respect of which no Community tax harmonisation has been carried out.
92. Although companies will have to make investments in order to achieve the targets of the agreements, the tax reduction is not directly linked to and expressed as a percentage of eligible investment costs. The tax reduction thus constitutes operating aid.
93. The UK introduces these tax reductions in order not to endanger the competitiveness of energy-intensive industrial sectors, for which the full rate of the levy would be an increase of their costs and for which the levy is a competitive disadvantage in particular as there is not tax harmonisation on energy consumption at the Community level.
94. The Commission notes that the CCL taxes energy consumption. By increasing the costs for energy, it will contribute to a more efficient use of energy, and thereby to the reduction of nuisable CO₂ emissions and will thus make an important contribution for environmental protection. The tax reductions are conditional on climate change agreements. These agreements establish emission reduction targets and energy efficiency targets, which will contribute to the same objective as the tax itself. They thus do not undermine the general objective of the tax pursued.
95. According to point 3.4 of the guidelines, the aid must only compensate for extra production costs by comparison with traditional costs. This means that point 3.4. only justifies to avoid additional burden through new taxes for certain companies compared to the status quo, but does thus not cover any net benefits. The notified aid elements in the CCL do not amount to a complete exemption covering the total tax increase through the law, but companies are left with a contribution of their own. Consequently, there will be no overcompensation, since all companies benefiting from the aid measures will still have to pay more tax than before.
96. The Commission notes that the agreement is of a temporary nature, in so far as it has been notified for a period of 10 years. Such agreements may relate, among other things, to a reduction in energy consumption or a reduction in emissions. The tax reductions are conditional on the associations of firms or companies entering into climate change agreements, which pursue the objectives required by the guidelines.
97. The Commission notes that under point 3.4 of the guidelines, temporary relief from new environmental taxes may be authorized where it is necessary to offset losses in competitiveness, particularly at international level. Without it being necessary to enter into a detailed analysis, the Commission has no doubt that comparable environmental taxes do not yet exist in all other Member States and third countries with which the United Kingdom is competing, although it is not excluded that such taxes may be introduced in the future.
98. Point 3.4, first paragraph of the guidelines also provides that State aid in the form of relief from environmental taxes should be in principle degressive. The guidelines thus foresee, where appropriate, the possibility of an exception to this rule. In the present case, the aid does not at this time contain any element of degressivity, other than the fact that the underlying logic of the aid is that it should be temporary and other than the fact that it will only be authorized until July 2002. The Commission has nevertheless decided to approve the aid, particularly having regard to its existing practice regarding the interpretation of this part of the guidelines.
99. For the above reasons, the Commission considers that the tax reductions under the climate change agreements fulfill the requirements of the 1994 Community guidelines on State aid for environmental protection (OJ C 72 of 10 March 1994), which continue to apply to the ECSC Treaty until its expiry at the end of July 2002, and is thus compatible with Article 3 of the Steel Aid Code and Article 4 of the ECSC Treaty. The Commission, therefore, under the ECSC Treaty, as it does under the EC Treaty, raises no objections to the proposed aid. However, this decision to raise no objections is limited until the expiry of the ECSC Treaty, at which time the United Kingdom is invited to notify the measures in sufficient time to enable the Commission to assess them in the light of the provisions that will apply to the steel sector.

3.3.2. *Exemption for dual-use fuels*

100. Assuming that the exemption for dual-use fuels constitutes State aid, the Commission has doubts about its compatibility with the guidelines.
101. The Commission notes that the provision exempts energy consumption for some very energy intensive processes causing considerable CO₂ emissions and thus runs counter to the general objective of the tax, namely the reduction of CO₂ emissions.
102. The Commission notes that the exemption is not temporary, nor is it degressive.
103. The Commission notes that the exemption is not made conditional on the conclusion of agreements in order to achieve environmental protection objectives, nor is the tax subject to conditions that have the same effect as agreements.
104. The UK has not demonstrated that firms eligible for the exemption must nevertheless pay a significant proportion of the national tax and that it is not merely compensating for extra production costs.
105. For the above reasons, the Commission has doubts that the dual-use exemption is compatible with the guidelines.

4. CONCLUSION

106. The Commission concludes that the levy reductions for companies covered by the climate change agreements fulfill the requirements of the 1994 Community guidelines on State aid for environmental protection (OJ C 72 of 10 March 1994), which continue to apply to the ECSC Treaty until its expiry at the end of July 2002, and is thus compatible with Article 3 of the Steel Aid Code and Article 4 of the ECSC Treaty. This decision to raise no objections is limited until the expiry of the ECSC Treaty, at which time the United Kingdom authorities are invited to notify the measures in sufficient time to enable the Commission to assess them in the light of the provisions that will apply to the steel sector.
107. In the light of the foregoing considerations, the Commission, acting under the procedure laid down in Article 6(5) of the Steel Aid Code, requests the United Kingdom to submit its comments and to provide all such information as may help to assess the exemption on dual-use fuels, within one month of the date of receipt of this letter. It requests your authorities to forward a copy of this letter to the potential recipient of the aid immediately.
108. The Commission wishes to remind the United Kingdom that Article 6(4) of the Steel Aid Code has suspensory effect, and provides that all unlawful aid may be recovered from the recipient.»