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Proposal for a

COUNCIL DECISION

authorizing Sweden to apply reduced levels of taxation to electricity consumed by households and service sector companies situated in certain areas in the north of Sweden 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 Sweden to apply, within defined limits, a reduced rate of excise duty on electricity consumed by households and service sector companies in certain areas in the north of Sweden. The objective of this measure is to compensate for higher heating costs in these areas caused by the specific climatic conditions of the region.

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.

Council Decision 2005/231/EC² as amended by Council Decision 2006/503/EC³ authorises Sweden to apply a reduced rate of taxation to electricity consumed by households and service sector companies situated in certain municipalities listed in the annex to the Decision. The tax reduction is to be proportionate to the extra heating costs due to the northern location, in comparison with the rest of Sweden and the reduced rate has to comply with the requirements of Directive 2003/96/EC, and in particular the minimum rates laid down in Article 10 of that Directive. This authorisation expires on 31 December 2011.

By letter dated 8 June 2011, under Article 19 of the Directive, the Swedish authorities have informed the Commission that they intend to continue to apply this reduced tax rate. The reduction shall not exceed SEK 96/MWh, or EUR 10,40⁴. Sweden has requested for the reduction to be authorised for a period of six years, i.e. until 31 December 2017, which is the maximum period indicated in Article 19(2) of the Directive.

Sweden justifies the measure by environmental as well as regional and cohesion policy objectives. Sweden underlines the fact that national tax rates on electricity considerably exceed the minimum levels of taxation as prescribed in Directive 2003/96/EC and that therefore a stronger incentive for energy efficiency is provided through the tax system on national level than required by the EU minimum rates. However, according to the Swedish authorities this high general level of taxation can only be maintained if the northern areas,

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.

² OJ L 72 of 18.3.2005, p. 27.

³ OJ L 199 of 21.7.2006, p. 19.

⁴ Based on the exchange rate of 1 October 2010 (9,2183 SEK = 1 EUR), cf. Art. 13(1) of Directive 2003/96/EC.

which are placed at a competitive disadvantage due to climatic conditions, are afforded a tax reduction. At the same time, the measure would mitigate differences in costs of heating between different parts of the country and thereby contribute to the objectives of the EU's regional and cohesion policies.

As regards the nature of the disadvantage caused by the climatic differences, the Swedish authorities have reiterated the statement made in earlier requests that heating costs are, on average, 25% higher in the northern regions as the heating period in these areas is longer.

The loss of revenue ensuing from the reduction of SEK 96/MWh is estimated to amount to SEK 910 million p.a., or EUR 99 million.

- *Operation of the measure*

The measure is granted in the form of a reduced tax rate. This reduced rate applies directly when the tax is levied.

- *Scope*

The Swedish authorities have stated that the geographic differentiation was introduced on the basis of objective data relating to average temperatures. On this basis, a reduced tax applies in all the municipalities of the counties of Norrbotten, Västerbotten and Jämtland and in the municipalities of Sollefteå, Ånge, Örnsköldsvik, Ljusdal, Malung, Mora, Orsa, Älvdalen and Torsby. The measure is limited to households and service sector companies since only these groups pay the full energy tax on electricity. As on the other hand the electricity consumed by the manufacturing industry is in any case taxed at a lower rate, the measure in question does not affect companies from this sector.

According to the Swedish authorities the measure affords the beneficiaries in the northern parts of the country the same conditions as the same consumer groups in southern Sweden.

- *Arguments of the Swedish authorities concerning the impact of the measure on the internal market*

The Swedish authorities do not think that the measure would affect the proper functioning of the internal market. They consider that, although the measure might have an effect on trade between Member States by reducing the costs of service sector companies in the North of Sweden, this effect would remain limited as most service-sector companies normally operate within a limited geographical area.

- *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 Sweden consists in reducing excise duty on electricity consumed by households and service sector companies in the north of Sweden. The Swedish authorities underline two objectives of the measure. First, they submit that the reduced tax rate has an indirect positive environmental effect by allowing the application of a higher overall tax rate than would otherwise be possible. In this regard, the Commission notes that environmental protection requirements as such are already an integral part of Directive 2003/96/EC⁵ and therefore do not in themselves qualify as specific policy considerations. However, the Directive does not, in a general way, allow for addressing the specific needs of regions with very particular climatic conditions. In such a context, the aim of contributing to the maintenance of a relatively high level of taxation by avoiding, through a reduced rate, otherwise excessive burdens in regions subject to such conditions can therefore be considered a specific policy consideration.

Secondly, Swedish authorities submit that the reduction approximates the overall costs of heating for consumers in the north of Sweden with the costs borne by consumers in other parts of the country and therefore pursues regional and cohesion policy objectives.

On this count, equally, the requested authorisation can be considered as based on specific policy considerations.

- *Consistency with the other policies and objectives of the Union*

The general tax rate on electricity applicable to households and service sector companies in Sweden is SEK 283, or EUR 30,70, per MWh, compared to an EU minimum rate of 1 EUR per MWh for non-business use⁶. With the proposed reduction, the applicable rate in the north of Sweden is at least SEK 187 per MWh or EUR 20,29 per MWh. Since the levels of taxation on electricity are well above the minimum rate both in the north of Sweden and in the rest of the country, it is plausible to assume that the tax reduction in question does in fact indirectly contribute to the achievement of a higher overall level of environmental protection in the way described by the Swedish authorities.

In this context, the aim of the measure is to partly counterbalance the higher costs of heating in the areas to which the reduced tax rate applies. According to the Swedish authorities, the climatic conditions in these areas lead to a consumption of electricity that is, on average, around 25% higher than in the rest of the country, mainly due to a longer heating period.

In this regard, the Commission notes that on the basis of recent electricity prices in Sweden the price reduction following from the proposed measure would be significantly less than 25% for all relevant consumer groups. Based on the most recent price data available from Eurostat,

⁵ Cf. in particular recitals (6) and (7).

⁶ On the basis of Art. 11(4) of Directive 2003/96/EC Member States may limit the scope of the reduced level of taxation for business use. As stated above, Sweden in fact applies the tax rate for non-business use to both households and service sector companies.

this reduction ranges from 3,1% to 6,8%, depending on the level of consumption of the households and companies concerned⁷.

The amount of the relief therefore remains below the additional costs of heating in the regions concerned. As a result, the fiscal incentive to use energy efficiently is maintained at a level at least equal to the one prevailing in the rest of Sweden.

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, the measure 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 remote nature of the areas to which it applies and the fact that it is limited to households and service sector companies, it is not expected that it will lead to significant distortions of competition or changes in trade patterns between Member States. Finally, it is recalled that a tax reduction for the areas in question has been in operation for thirty years without this giving rise, as far as the Commission is aware, to any problems in relation to the proper functioning of the internal market or other objectives of EU policy.

- *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 provide the businesses and consumers concerned with a sufficient degree of certainty.

As far as the future development of the existing legal framework and, more concretely, the proposal for a revision of Directive 2003/96/EC submitted by the Commission on 13 April 2011 [COM(2011)169] is concerned, it is recalled that the adoption of this proposal would not lead to an alteration of current rules in a manner relevant to the operation of the authorisation proposed here. There is thus no need to provide for particular safeguards in the matter.

State Aid rules

After the reduction envisaged by the Swedish authorities, the tax rate on electricity in the regions concerned will still respect the minimum level of taxation pursuant to Article 10 of Directive 2003/96/EC. Moreover, the Council authorisation will apply from 1 January 2012 until 31 December 2017 (thus less than 10 years). The measure therefore falls under the so-called General Block Exemption Regulation (Regulation (EC) No 800/2008)⁸ and is, by consequence, exempt from the prior notification requirement.

⁷ Source: Eurostat price figures for 2nd semester 2010. Figures are for non-industrial use of categories DA (consumption less than 1 000 kWh) to DE (consumption more than 15 000 kWh).

⁸ 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.

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

Consultation of interested parties

This proposal is based on a request made by Sweden 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 Sweden to derogate from the general provisions of Council Directive 2003/96/EC and to apply, within defined limits, differentiated levels of taxation on electricity.

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 EU 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 EU 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.

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 EU. The proposal therefore has no impact on the EU budget.

Proposal for a

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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 electricity⁹, and in particular Article 19(1) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) Council Decision 2005/231/EC¹⁰ as amended by Council Decision 2006/503/EC¹¹ authorises Sweden to apply, until 31 December 2011, a reduced rate of excise duty to electricity consumed by households and service sector companies in certain areas in the north of Sweden pursuant to Article 19 of Directive 2003/96/EC.
- (2) By letter of 8 June 2011 Sweden requested authorisation to continue to apply a reduced rate of excise duty to electricity consumed by the same beneficiaries for a period of six more years, i.e. until 31 December 2017. The reduction is to be limited to SEK96 per MWh.
- (3) In the areas concerned, the costs of heating are on average 25% higher than in the rest of the country due to the longer heating period. Reducing the costs of electricity for households and service sector companies in these areas therefore narrows the gap between overall costs of heating for consumers in the north of Sweden and those borne by consumers in the rest of the country. The measure therefore contributes to achieving regional and cohesion policy objectives. The measure moreover allows Sweden to apply an overall tax rate on electricity that is higher than what would otherwise be possible and therefore indirectly contributes to the achievement of environmental policy objectives.

⁹ OJ L 283, 31.10.2003, p. 51.

¹⁰ OJ L 72 of 18.3.2005, p. 27.

¹¹ OJ L 199 of 21.7.2006, p. 19.

- (4) The tax reduction should not be larger than what is necessary to compensate for the additional costs of heating for households and service sector companies in the north of Sweden.
- (5) The reduced rates of taxation will be above the minimum rates laid down in Article 10 of Directive 2003/96/EC.
- (6) In view of the remote nature of the areas to which it applies, the fact that the reduction should not exceed the additional costs of heating in the north of Sweden and the limitation of the measure to households and service sector companies, the measure is not expected to lead to significant distortions of competition or changes in trade between Member States.
- (7) 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.
- (8) In order to provide the businesses and consumers concerned with a sufficient degree of certainty it is appropriate to authorise Sweden to apply a reduced rate of taxation to electricity for consumption in the North of Sweden until 31 December 2017.
- (9) It should be ensured that the authorisation under Decision 2005/231/EC, granted for similar reasons for the previous period, continues to apply, without creating a gap between the expiry of that Decision and the taking effect of this Decision,

HAS ADOPTED THIS DECISION:

Article 1

1. Sweden is hereby authorised to apply a reduced rate of taxation to electricity consumed by households and service sector companies situated in the municipalities listed in the Annex.

The reduction from the standard national rate of taxation for electricity shall be no greater than what is necessary to compensate for the extra heating costs due to the northern location, in comparison with the rest of Sweden, and shall not exceed SEK 96 per MWh.

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 10 thereof.

Article 2

This Decision shall be applicable from 1 January 2012 and shall expire on 31 December 2017.

Article 3

This Decision is addressed to the Kingdom of Sweden.

Done at Brussels,

*For the Council
The President*

Annex

Regions	Municipalities
Norrbottens län	All municipalities
Västerbottens län	All municipalities
Jämtlands län	All municipalities
Västernorrlands län	Sollefteå, Ånge, Örnköldsvik,
Gävleborgs län	Ljusdal,
Dalarnas län	Malung, Mora, Orsa, Älvdalen
Värmlands län	Torsby