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2019/0004 (NLE)

Proposal for a

COUNCIL IMPLEMENTING DECISION

authorising France to apply a reduced rate of taxation to unleaded petrol used as motor fuel and consumed in Corsican departments in accordance with Article 19 of Directive 2003/96/EC

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

The taxation of energy products and electricity in the EU is governed by Council Directive 2003/96/EC (hereafter 'the Directive'). The Directive specifies which products are taxable, the uses that make them taxable and the minimum rates at which they must be taxed depending on whether they are used as motor fuel, for certain industrial or commercial purposes or for heating.

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

The objective of this proposal is to permit France to continue to apply a reduction in the rate of taxation on unleaded petrol used as motor fuel and consumed in the Corsican departments with a view to partially offsetting the additional costs induced by geographical remoteness and difficulties of supply.

• The request and its general context

Council Decision 2007/880/EC of 20 December 2007 authorised France to apply a reduced rate of excise duty to unleaded petrol used as motor fuel and consumed in the Corsican departments on the condition that the reduction does not go beyond the additional cost of transport, storage and distribution compared with mainland France. Council Implementing Decision 2013/192/EU of 22 April 2013 authorised the France to continue to apply a reduced rate of taxation to unleaded petrol used as motor fuel and consumed in the Corsican departments in accordance with Article 19 of Directive 2003/96/EC. The objective of these Decisions is to permit France to partially offset the additional costs induced by geographical remoteness and difficulties of supply. In application of this Decision, France applied a reduction of EUR 1 per hectolitre of unleaded petrol

By letter dated 26 September 2018, the French authorities requested an authorisation to continue to apply a reduction of EUR 1 per hectolitre for a period of six years, from 1 January 2019 to 31December 2024. By letters dated 25 October 2018 and 7 November 2018 France has submitted additional information concerning the justification of the request for derogation.

As in the previous requests, the French authorities argued that the reduction in the rate of excise duty is required to offset part of the higher price of unleaded petrol. The pump price of unleaded petrol (SSP95) in Corsica on September 2018 was EUR 1.67 per litre compared to an average price of EUR 1.63 per litre on the French territory (on the perimeter of the French main suppliers, excluding retail) resulting from the insular nature of Corsica.

According to the French authorities, several reasons explain this additional cost.

(1) Given that there is no refinery in Corsica, transport and distribution costs are higher for delivery of fuel there because of the additional costs associated with maritime and road freight (longer distance and journey time). The distance from the nearest refinery in Fos-sur-Mer to the two storage warehouses on Corsica in Luciano and Ajaccio is respectively 358 km (of which 182 km by sea) and 315 km (of which 170 km by sea). Transport to these warehouses exclusively takes place by boat, whereas all warehouses situated on mainland France are all directly linked to a refinery through a network of pipelines, which considerably reduces transport costs. As an example, costs of

transport to Corsica are four to five times higher than costs for a transport by pipeline between Le Havre and the region of Paris.

(2) The much smaller capacity of the two warehouses in Corsica (respectively 16 000 m^3 and 19 000 m^3) requires more frequent supplies to them. Investment in the maintenance, compliance of facilities and staff costs are not related to business volume of the depots. The total volume of fuel entered in these depots is less than 400 000 m^3 per year, which is half of the average volume for a depot on the mainland. Hence, the storage cost per m^3 is higher in Corsica.

(3) The fixed costs borne by distributors must be absorbed by a lower sales volume because of the low population. The number of inhabitants is 37,7/km^2 in Corsica compared to 118/km^2 (Insee 2018) in mainland France, the very mountainous terrain (90% mountains) and the small volumes of fuel sold by each service station. The areas of distribution are therefore isolated and far apart from each other. The number of inhabitants per service station (is 2 485 compared to an average of 5 768 on the French territory and the sales volume per service station amounts to 2 278 m^3 for Corsica as compared to 4 149 m^3 in mainland France).

As illustrated in the table below, the international petrol price quotations for Corsica and for mainland France are the same amounting to EUR 46.62 per 100 litres. The difference in the gross transport costs is very high between mainland France and Corsica, respectively EUR 13.87 per 100 litres and EUR 35.05 per 100 litres. In spite of the lower tax rates (both energy tax and VAT) the final price for unleaded petrol is higher in Corsica than in mainland France.

The table below shows the price structure of petrol and diesel on October 2018.

***Price of fuel (EUR per hl**)*

Average price of a petrol in EUR per 100 litres	Mainland France	Corsica	South Corsica
Price including taxes	155.55	168.33	167.78
VAT	25.93	19.37	19.30
Energy tax	69.14	67.29	67.29
Gross transport and distribution margin	13.87	35.05	34.57
International quotations	46.62	46.62	46.62

Source: www.prix- carburants.gouv.fr

France also pointed out that the measure comes under the specific government policy in favour of development in Corsica, justified by the handicap of insularity.

- **Provisions in the field covered by 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 tax differentiation places unleaded petrol consumers in Corsica on a more equal footing with similar consumers on the mainland by partially offsetting the additional cost borne by consumers in Corsica. The proposed measure therefore meets certain regional and cohesion policy objectives.

The tax reduction does not go beyond the additional costs of transport and distribution borne by consumers in Corsica. The EUR 10 per1 000 l reduction in the cost of unleaded petrol is much smaller than the difference between the respective final prices.

The reduced rate of taxation on the consumption of unleaded petrol currently applied in Corsica (EUR 672.9/1 000 l) is still appreciably higher than the minimum EU level set by Directive 2003/96/EC (EUR 359/1 000 l).

Consistency with the other policies and objectives of the Union

When the Commission examines a request, it takes into account the proper functioning of the internal market, the need to ensure fair competition and the implementation of the EU's health, environment, energy and transport policies.

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. It merely seeks to partially offset the additional costs associated with Corsica's island status. In view of the remote and insular nature of the departments to which it applies and the moderateness of the reduction in the rate - which is, moreover, very high compared with the EU minimum - the measure is not expected to lead to changes in fuel consumption, through the attraction of consumers from outside these areas.

As the effect of the tax relief on transport is expected to be insignificant, and compensatory policies could be found for any marginal effects which might occur, the measure is not incompatible with the health, environment, energy and transport policies of the union.

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

Article 19(2) of Directive 2003/96/EC lays down, for this type of measure, a maximum period of six years, with the possibility of renewal. Taking into account the absence of any negative impact of the current arrangement on intra-EU trade and on the general level of taxation of fuels in France, in order to ensure legal certainty for the region, the Commission suggests at this stage to grant the authorisation for six years, i.e. from 1 January 2019 until 31 December 2024.

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.

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 France for a similar authorisation adapted to that new system, so as to provide for the continuity of the present proposal.

- **State aid rules**

The measure may constitute State aid in accordance with Article 107(1) of the TFEU. Since the reduced rates are above the EU minima, the measure would be covered by Article 44 of Regulation 651/2014/EU (the General Block Exemption Regulation) and would thus be considered compatible with the internal market. Upon expiry of the period of validity of the General Block Exemption Regulation on 31 December 2020 the aid remains exempted during an adjustment period of six months (see Article 58(4) of the General Block Exemption Regulation). The decision is without prejudice to the applicable State aid rules during the period covered by the derogation.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

Article 19 of Council Directive 2003/96/EC.

- **Principle of subsidiarity**

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

However, pursuant to Article 19 of Directive 2003/96/EC, the Council has been granted an exclusive competence, as a matter of secondary law, to authorise a Member State to introduce further exemptions or reductions within the meaning of that provision. Member States cannot therefore substitute themselves for the Council. As a result, the principle of subsidiarity is not applicable to the present implementing decision. In any event, since this act is not a draft legislative act, it should not be transmitted to national Parliaments pursuant to Protocol No 2 to the Treaties for review of compliance with the subsidiarity principle.

- **Principle of proportionality**

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

- **Choice of instrument**

Instrument proposed: Council implementing decision.

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

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

The measure does not require the evaluation of existing legislation.

- **Consultation of interested parties**

The proposal consists of a tax reduction which concerns only France.

- **Obtaining and using expertise**

No external expertise has been used.

- **Impact assessment**

No impact assessment has been carried out.

- **Fundamental rights**

The measure has no bearing on fundamental rights.

4. BUDGETARY IMPLICATIONS

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

5. OTHER ELEMENTS

Implementation plans and monitoring, evaluation and reporting arrangements

An implementation plan is not necessary. This proposal concerns an authorisation for a tax reduction for an individual Member State upon its own request. It is provided for a limited period of six years. The tax rate that will apply will be higher than the minimum level of taxation set by the Energy Taxation Directive. The measure can be evaluated in case of a request for a renewal after the six-year period has expired.

- **Summary of the measure proposed**

The Commission proposes to authorise the tax reduction of EUR 10 per 1 000 l until 31 December 2024, thereby permitting France to apply a reduced rate of taxation to unleaded petrol used as motor fuel and consumed in the Corsican departments.

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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 electricity [1], and in particular Article 19(1) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) By Council Decision 2007/880/EC [2] and Council Implementing Decision 2013/192/EU [3] France was authorised to apply a reduced rate of taxation to unleaded petrol used as motor fuel and consumed in Corsican departments in accordance with Article 19 of Directive 2003/96/EC.

(2) By letter dated 26 September 2018, France requested authorisation to apply a reduced rate of energy tax to unleaded petrol used as motor fuel by way of extension of a practice followed under Decision 2007/880/EC and Implementing Decision 2013/192/EU. The reduction amounts to EUR 1 per hectolitre. The authorisation is requested for the period from 1 January 2019 to 31 December 2024. In Corsica the cost of supplying unleaded petrol to the forecourt is appreciably higher than in mainland France, final prices being over EUR 0.10 per litre higher than on the mainland.

(3) By reducing the tax on unleaded petrol borne by consumers in Corsica, the consumers concerned will be placed on a more equal footing with those on the mainland France. The measure therefore meets regional and cohesion policy objectives.

(4) The tax reduction is no larger than what is necessary to allow for the additional transport and distribution costs borne by consumers in Corsica.

(5) The final level of taxation complies with the minimum rates laid down in Directive 2003/96/EC - currently EUR 359 per 1000 litres (or EUR 35.90 per hectolitre).

[1] OJ L 283, 31.10.2003, p. 51.

[2] Council Decision 2007/880/EC of 20 December 2007 authorising France to apply a reduced rate of taxation to unleaded petrol used as motor fuel and consumed in the Corsican departments in accordance with Article 19 of Directive 2003/96/EC (OJ L 346, 29.12.2007, p. 15).

[3] Council Implementing Decision 2013/192/EU of 22 April 2013 authorising the French Republic to apply a reduced rate of taxation to unleaded petrol used as motor fuel and consumed in the Corsican departments in accordance with Article 19 of Directive 2003/96/EC (OJ L 113 25.4.2013, p. 13).

(6) In view of the remote and insular nature of the departments to which it applies and the moderateness of the reduction in the rate - which is, moreover, very high compared with the minimum level prescribed by Directive 2003/96/EC - the measure requested will not give rise to any movement specifically linked to the supplying of fuel.

(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 not incompatible with the health, environment, energy and transport policies of the Union.

(8) France should therefore be authorised, pursuant to Article 19(2) of Directive 2003/96/EC, to apply a reduced rate of taxation to unleaded petrol used as motor fuel and consumed in Corsica until 31 December 2024.

(9) It follows from Article 19(2) of Directive 2003/96/EC that each authorisation granted under that Article must be strictly limited in time.

(10) In order to provide the regions concerned with a sufficient degree of certainty, the authorisation should be 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 this authorisation would not be adapted, this Decision expires on the day on which the rules on that modified system become applicable.

(11) It should be ensured that France can apply the specific reduction to which this Decision relates seamlessly following on from the situation existing before 1 January 2019, under Implementing Decision 2013/192/EU. The authorisation requested should therefore be granted with effect from 1 January 2019.

(12) This Decision is without prejudice to the application of the Union rules regarding State aid,

HAS ADOPTED THIS DECISION:

Article 1

France is authorised to apply a reduction in the rate of taxation not exceeding EUR 1 per hectolitre to unleaded petrol used as motor fuel and consumed in the Corsican departments.

In order to avoid any over-compensation, the reduction shall not go beyond the additional costs of transport, storage and distribution compared with mainland France.

The reduced rate shall comply with the obligations in Directive 2003/96/EC, in particular the minimum rates referred to in Article 7 thereof.

Article 2

This Decision shall apply from 1 January 2019 and shall expire on 31 December 2024.

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 authorisation granted in Article 1 of this Decision would not be adapted, this Decision shall expire on the day on which the rules on that modified system become applicable.

Article 3

This Decision is addressed to France.

Done at Brussels,

For the Council
The President