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2022/0250 (NLE)

Proposal for a

COUNCIL IMPLEMENTING DECISION

authorising Sweden to apply reduced rates of excise duty to petrol, unmarked gas oil and equivalent fuels used as motor fuels, in accordance with Article 19 of Directive 2003/96/EC

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

Taxation of energy products and electricity in the European Union is governed by Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity[1] (the 'Energy Taxation Directive' or the 'Directive').

Pursuant to Article 19(1) of the Directive, in addition to the provisions laid down 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 in the level of taxation for specific policy considerations.

Sweden is seeking for authorisation to apply a temporary reduction of the national tax rates for petrol, unmarked gas oil and equivalent fuels used as motor fuels, falling below the minimum levels of taxation as laid down in Table A of Annex I to the Directive.

The requested period of validity is limited to 3 months and is within the maximum period allowed by Article 19(2) of the Energy Taxation Directive.

By letter dated 6 May 2022, the Swedish authorities informed the Commission of their intention to apply the temporary measure. Additional information was provided on 19 and 24 May 2022.

According to the Swedish authorities, the aim of the measure is to mitigate the high retail prices of petrol and diesel in the country, resulting from the recent geopolitical developments, and directly affecting both households and companies. They highlighted that Sweden, as a sparsely populated country, has a high proportion of residents that depend on their cars for commuting and other daily trips.

As underlined by the same authorities, the price of petrol has increased by around 2.50 SEK/litre, rising from 19.39 SEK/litre on 24 February 2022 to 21.93 SEK/litre on 16 May 2022. Similarly, for diesel the price has increased by 2.14 SEK/litre, from 21.82 SEK/litre to 23.96 SEK/litre for the same period. A reduction of excise duty of 1.80 SEK/litre was granted during that period. However, for 15 000 kilometres per year and a fuel consumption of 6 litres per 100 kilometres, the monthly fuel expense has increased by around 160-190 SEK/month.

The table below provided by the Swedish authorities, shows fuel prices per litre and the price components for the 25th of each month from January to April 2022 and the price on 20 of May 2022.

[1] OJ L 283, 31.10.2003, p. 51-70.

Date	Fuel	Product price incl. gross margin	Excise duty	VAT	Price
2022 01 25	Petrol	7.97	6.82	3.7	18.49
	Diesel	11.98	4.8	4.19	20.97
2022 02 25	Petrol	9.29	6.82	4.03	20.14
	Diesel	13.34	4.8	4.53	22.67
2022 03 25	Petrol	10.41	6.82	4.31	21.54
	Diesel	16.42	4.8	5.3	26.52
2022 04 25	Petrol	10.17	6.82	4.25	21.24
	Diesel	15.5	4.8	5.07	25.37
2022 05 20	Petrol	12.05	5.37	4.36	21.78
	Diesel	15.06	3.35	4.6	23.01

The Swedish excise duty was 5.37 SEK/litre for petrol and 3.35 SEK/litre for diesel in May 2022. It comprises an energy tax and a carbon dioxide tax levied at the time of release for consumption. Together they meet the minimum levels of taxation laid down in the Directive.

Sweden requests authorisation to temporarily reduce to zero the energy tax component of the excise duty, while keeping the CO_2 tax component for both products in line with the request of its national parliament[2]. Such a reduction of the energy tax component (corresponding to 2.73 SEK/litre for petrol and 1.06 SEK/litre for diesel) would result in tax rates lower than the minimum EU levels of taxation (approximatively 30% below those levels).

According to the Swedish authorities, the excise duty is the only price component on which Sweden can intervene to reduce the retail price in the short term. Hence, in their view, the derogation appears necessary to remedy the current situation Sweden faces.

The tax reduction will be available to all those liable for excise duty on petrol and diesel.

The budgetary expenditure is estimated at SEK 3.5 billion (SEK 2.1 billion deriving from the tax reduction on petrol and SEK 1.4 billion for diesel).

- **Consistency with existing policy provisions in the policy area**

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.’

By means of the requested temporary tax reduction, the Swedish authorities intend to mitigate the high retail prices of petrol and diesel, and reduce the social and economic impacts of the current geopolitical situation affecting both households and companies.

[2] On 7 April, the Swedish Parliament decided on proposals put forward by the Parliamentary Committee on Finance (Bet. 2021/22:FiU473). One of the proposals included a request for an announcement to the government to apply for the derogation needed to reduce of the energy tax on petrol and diesel to zero for three months. The Swedish Parliament decided in accordance with the Committee’s proposal.

Reducing the energy tax component to zero while keeping the CO_2 component would lead to a situation where beneficiaries would be charged national rates around 30% below the EU minimum tax rates under the Energy Taxation Directive. In the present exceptional geopolitical situation, this would be of relevance to the social cohesion policy considerations.

The possibility to introduce such a tax reduction can be envisaged under Article 19 of the Directive since its purpose is to allow Member States to introduce further exemptions or reductions for specific policy considerations.

The limited period of validity of 3 months is within the maximum period allowed by Article 19(2) of the Energy Taxation Directive, laying down, for this type of measure, a maximum period of 6 years, with the possibility of renewal.

However, the derogation should not undermine the future adoption by the Council of a legal act based on a Commission proposal for amendment of the Energy Taxation Directive[3].

State aid rules

The temporary tax reduction envisaged by the Swedish authorities falls under the minimum levels of taxation as laid down in Table A of Annex I to the Directive.

The present proposal is without prejudice to any assessment of the Swedish measure under State aid rules. Moreover, the proposal for a Council implementing decision does not prejudge the Member State's obligation to ensure compliance with State aid rules.

- **Consistency with other Union policies**

Each request for derogation under Article 19 of the Energy Taxation Directive must be examined by the Commission taking into account the proper functioning of the internal market, the need to ensure fair competition and EU health, environment, energy and transport policies.

According to the Swedish authorities, the envisaged tax reduction should partially alleviate the social and economic burden of the Swedish population due to the recent price increase resulting also from the conflict in Ukraine. Indeed, the particular geopolitical situation, coupled with a high market price of oil, which is likely to further rise in the upcoming months, translates into higher costs for Swedish households and businesses.

Since the measure is expected to temporarily lower fuel prices, it might make refuelling in Sweden more attractive in border areas, mainly for petrol. However, Sweden highlighted that it has higher quotas under the reduction obligation scheme, compared to other EU countries. In other words, the share of biofuels, especially in diesel, is higher in Sweden, which leads to higher retail prices. As a result of this situation, lowering the diesel price in Sweden is not likely to affect intra-EU trade. Given its limited effects and limited duration, the measure should not distort competition or hinder the functioning of the internal market.

[3] Proposal for a Council directive restructuring the Union framework for the taxation of energy products and electricity (recast), 14.7.2021, 563 final 2021/0213 (CNS).

As underlined in the RePowerEU Communication[4], while focusing on vulnerable households and businesses, the Commission invites Member States to adopt measures incentivising energy savings and reducing fossil fuels consumption. Nonetheless, given its short duration and the current exceptional circumstances linked to the geopolitical situation coupled with an exceptionally high market price of oil, the requested derogation seems adequate and proportionate. The measure takes account also of the need to balance the specific policy objectives listed in Article 19 of the Energy Taxation Directive, and notably the EU's environmental policy, with the imperative emergency to ensure energy affordability for businesses and households.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

Article 19 of Council Directive 2003/96/EC.

• Subsidiarity (for non-exclusive competence)

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

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.

• Proportionality

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

The tax reductions are applicable during a limited three-month period of time.

• Choice of the instrument

The instrument proposed is a Council implementing decision. Article 19 of Directive 2003/96/EC 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.

• Stakeholder consultations

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

[4] Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions *REPowerEU: Joint European Action for more affordable, secure and sustainable energy*, (COM(2022) 108 final, 8.3.2022).

- **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 and does not require an impact assessment.

- **Regulatory fitness and simplification**

The measure does not provide for any simplification. It is the result of the request made by Sweden and concerns this Member State only.

- **Fundamental rights**

The measure has no bearing on fundamental rights.

4. BUDGETARY IMPLICATIONS

The measure does not impose any financial or administrative burden on the European Union. The proposal therefore has no impact on the budget of the Union.

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 3 months. The applicable tax rates will be below the minimum levels of taxation set by the Energy Taxation Directive. The measure can be evaluated in case of a request for a renewal after the validity period has expired.

- **Explanatory documents (for directives)**

The proposal does not require explanatory documents on the transposition.

- **Detailed explanation of the specific provisions of the proposal**

Article 1 stipulates that Sweden will be allowed to apply reduced taxation rates to petrol, unmarked gas oil and equivalent fuels used as motor fuels, below the minimum levels of taxation.

Article 2 stipulates that the authorisation requested is granted for three months after its entry into force, as requested by Sweden, within the maximum period of 6 years allowed by the Directive.

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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[5], and in particular Article 19 thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) By letter of 6 May 2022, Sweden requested authorisation to apply reduced rates of excise duty to petrol, unmarked gas oil and equivalent fuels used as motor fuels pursuant to Article 19 of Directive 2003/96/EC. Additional information and clarifications in support of the request were provided by the Swedish authorities on 19 and 24 May 2022. The authorisation was requested for a period of three months.

(2) According to the Swedish authorities, the application of a reduced tax rate, aims at mitigating the social and economic impacts of high retail prices of petrol and diesel resulting from the exceptional geopolitical situation, and directly affecting both households and companies. According to their assessment, as Sweden is a sparsely populated country and therefore, highly car-dependent, the reduced rates of excise duty aim to meet the daily needs associated with the consumption of motor fuels by contributing to reduce the impact of the increase of retail prices.

(3) The requested authorisation is not likely to distort competition or hinder the proper functioning of the internal market. Given its short duration and the exceptional circumstances linked to the geopolitical situation coupled with exceptionally high prices of crude oil, the requested authorisation is considered adequate and proportionate. The authorisation balances out the specific policy considerations referred to in Article 19(1) of Directive 2003/96/EC, and notably the Union's environmental policy, with the imperative emergency to ensure energy affordability for businesses and households. The tax reduction would partially offset the increased energy costs, and is not cumulative with any other type of tax reductions.

(4) Sweden should therefore be authorised to apply reduced rates of excise duty to petrol, unmarked gas oil and equivalent fuels used as motor fuels, as requested.

(5) In accordance with Article 19(2) of Directive 2003/96/EC, each authorisation granted under that provision is to be strictly limited in time. However, in order not to undermine future general developments of the existing legal framework, it is

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

appropriate to provide that, should the Council, acting on the basis of Article 113 or any other relevant provision of the Treaty on the Functioning of the European Union, introduce a modified general system for the taxation of energy products and electricity to which this authorisation would not be adapted, this authorisation should cease to apply on the day on which those general rules become applicable.

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

HAS ADOPTED THIS DECISION:

Article 1

Sweden is authorised to apply reduced rates of excise duty to petrol, unmarked gas oil, and equivalent fuels used as motor fuels, below the relevant minimum levels of taxation referred to in Article 7 of Directive 2003/96/EC.

Article 2

This Decision shall apply until [last day of the month following [3] months after the date of notification of this Decision].

However, should the Council, acting on the basis of Article 113 or any other relevant provision of the Treaty on the Functioning of the European Union, introduce a modified general system for the taxation of energy products and electricity to which the authorisation granted in Article 1 of this Decision would not be adapted, this Decision shall expire on the day on which those general rules become applicable.

Article 3

This Decision is addressed to the Kingdom of Sweden.

Done at Brussels,

For the Council
The President