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2025/0029 (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

• Reasons for and objectives 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 and Council Implementing Decision 2019/372/EU of 5 March 2019 authorised 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 those Decisions, France applies a reduction of EUR 1 per hectolitre of unleaded petrol.

By letter dated 31 October 2024, 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 2025 to 31 December 2030. The French authorities provided additional information by letter dated 27 November 2024.

As in the previous requests, the French authorities argue 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 in Corsica stays more than 10% higher than the average price in the mainland France. According to the French authorities, several reasons explain this additional cost. Corsica is supplied with fuel by sea only, which increases the final fuel price. Road transport of fuels to service stations is also more expensive, as mountainous terrain extends transport times. The seasonality of demand, linked to the summer tourist season, finally leads to the management of just-in-time stocks and entails the risk of quotas causing significant additional costs, as Corsica’s oil depots have a low storage capacity.

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. According to the French authorities, this derogation also aims to correct the structural shortcomings in the provision of public transport in Corsica linked to a very limited rail network and a difficult road network due to the mountainous terrain of the island.

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 1 per hectolitre 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 67.29/hl) is still appreciably higher than the minimum EU level set by Directive 2003/96/EC (EUR 35.90/hl).

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. The period of validity initially requested was from 1 January 2025 until 31 December 2030, which is within the maximum period allowed by Article 19 of the Energy Taxation Directive. Following discussions between the French authorities and the Commission, in particular in view of the proposed revision of Directive 2003/96/EC[1], an earlier termination date of 31 December 2028 was agreed. 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 to grant the requested authorisation for four years, i.e. from 1 January 2025 until 31 December 2028. Moreover, 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 French authorities argue that the measure does not constitute a State aid because it is addressed to final consumers and applies without discrimination based on their nationality or origin of the products. However, the measure may constitute a State aid in accordance with Article 107(1) of the TFEU. Since the reduced rates are above the EU minima, the measure seems to fall under Article 44 of Commission Regulation (EU) 651/2014, which stipulates the conditions under which aid in the form of reductions in taxes under Directive 2003/96/EC can be exempted from the State aid notification requirements. It cannot be established at this stage whether all the conditions set in this Regulation are fulfilled. The proposal for a Council implementing decision does not prejudge the Member State's obligation to ensure compliance with State aid rules, in particular, in case of exempted aid, with Commission Regulation (EU) 651/2014. The proposal for a Council Implementing Decision is also without prejudice to the Member State's obligation to notify the aid to the Commission before putting it into effect, pursuant to Article 108(3) of TFEU, should the new aid not be covered by a block exemption.

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 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 this proposal for a Council 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.

[1] COM/2021/563 final: Proposal for a COUNCIL DIRECTIVE restructuring the Union framework for the taxation of energy products and electricity (recast).

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 instruments

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.

- **Stakeholder consultations**

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

- **Collection and use of expertise**

No external expertise has been used.

- **Impact assessment**

No impact assessment has been carried out.

- **Regulatory fitness and simplification**

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

- **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 four 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 four-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 2028, 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 means of Council Decision 2007/880/EC[2] and Implementing Decisions 2013/192/EU[3] and 2019/372/EU[4], 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 31 October 2024, 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 Decisions 2013/192/EU and 2019/372/EU. The reduction amounts to EUR 1 per hectolitre. The authorisation is requested for the period from 1 January 2025 to 31 December 2028. 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. The measure therefore meets regional and cohesion policy objectives.

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1 OJ L 283, 31.10.2003, p. 51, ELI: http://data.europa.eu/eli/dir/2003/96/oj.

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, ELI: http://data.europa.eu/eli/dec/2007/880/oj).

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, ELI: http://data.europa.eu/eli/dec/2007/880/oj).

4 Council Implementing Decision (EU) 2019/372 of 5 March 2019 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 (OJ L 68, 8.3.2019, p. 5, ELI: http://data.europa.eu/eli/dec_impl/2019/372/oj).

(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 1 000 litres (or EUR 35,90 per hectolitre).

(6) In view of the remote and insular nature of the departments to which it applies and the moderate reduction in the rate — which is, moreover, very high compared to the minimum level set out in 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 in terms of the proper functioning of the internal market and of the need to ensure fair competition and 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.

(9) It should be ensured that France can apply the specific reduction to which this Decision relates from 1 January 2025, following seamlessly on from the prior arrangements under Implementing Decision 2019/372/EU. The authorisation requested should therefore be granted with effect from 1 January 2025.

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

(11) In order to provide the departments concerned with a sufficient degree of certainty, the authorisation should be granted for a period of four 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 on the Functioning of the European Union, introduce a general system for the taxation of energy products to which this authorisation would not be adapted, this Decision should expire on the day on which that system becomes applicable.

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

HAS ADOPTED THIS DECISION:

Article 1

France is hereby 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 overcompensation, the reduction shall not go beyond the additional costs of transport, storage and distribution borne in the Corsican departments compared to mainland France.

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

Article 2

This Decision shall take effect on the date of its notification.

It shall apply from 1 January 2025.

It shall expire on 31 December 2028.

However, should the Council, acting on the basis of Article 113 of the Treaty on the Functioning of the European Union, introduce a 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 that system becomes applicable.

Article 3

This Decision is addressed to the French Republic.

Done at Brussels,

For the Council
The President