

COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 09.11.2004
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Proposal for a

COUNCIL DECISION

authorising the United Kingdom to apply an exemption from climate change levy for low value solid fuel in accordance with Article 19 of Directive 2003/96/EC

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. SUBMISSION OF REQUEST

By letter of 18 June 2004, the British authorities applied to the Commission for a derogation allowing them to continue to apply an exemption from climate change levy (CCL) for low value solid fuel in accordance with Article 19 of Directive 2003/96/EC[1]. In order to obtain the information it required to evaluate the request, the Commission sent additional questions by letter dated 13 July to which the British authorities replied on 10 August 2004.

The UK introduced CCL on 1 April 2001. According to the UK authorities, the levy is designed to encourage energy efficiency and low carbon technologies in the non-domestic sector. It applies to gas, coal, electricity and liquefied petroleum gas (for heating) used by business and the public sector. There are a number of exemptions from the levy to encourage good environmental practice. Solid fuels[2] with a value of less than 15 GBP per tonne, such as the mixed sweepings and debris left from coal and coke mining, have been exempted from the levy. This is a very small-scale relief, introduced at the time of the levy's introduction in April 2001 for environmental reasons, namely to encourage the use of low-grade solid fuel which might otherwise be sent to landfill.

With the entry into force of Directive 2003/96/EC, Member States which do not tax these fuels are required to introduce such taxes.

The UK authorities consider that removing the exemption would result in tax being imposed at the rate of CCL levied on coal and coke (11.70 GBP per tonne). Low value coal sells at an average of 2.10 GBP per tonne, compared with an average of 28 GBP per tonne for normal quality coal. Levying CCL at the full rate would therefore increase the price by more than six times, pricing low value coal out of the market and resulting in it being sent to landfill as waste. Even introducing a reduced rate and levying CCL at the minimum EPD rate would more than double the price of waste solid fuels, which would still price them out of the market and result in their being sent to landfill as waste. This material has been exempted from the UK landfill tax since its introduction.

Any producer in another Member State is entitled to import these products and benefit from the exemption.

This policy is based on objective principles and implemented through a structured framework. As such, this exemption is part of the general system. Specifically, it is in the nature and logic of the levy (which is an energy tax) to exempt products of such low calorific value. The rates of CCL are based on the energy content of the fuels, and waste solid fuels have a much lower energy content than normal solid fuels. It is also within the nature of the levy's environmental aims to encourage the use of this material rather than encourage it to be sent to landfill.

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1 OJ L 283, 31.10.2003, p. 51. Directive as last amended by Directive 2004/75/EC (OJ L 157, 30.04.2004, p. 100).

2 "Solid fuel" refers only to coal and lignite; coke, and semi coke, of coal or lignite; petroleum coke.

The exemption is limited to those selling such low value solid fuel, and has the potential to have a small impact on competition and trade. The UK authorities believe that there are only a handful of companies (fewer than 10) selling this material, all of which benefit from the exemption. The annual cost to the UK Exchequer of the current relief across the whole sector is in the region of 100,000 GBP. In addition, any selectivity attached to this exemption would be consistent with the nature of the UK system. The UK authorities conclude that the measure is therefore not a state aid.

2. EVALUATION BY THE COMMISSION

Under Article 19(1) of Directive 2003/96/EC, the Council, acting unanimously on a proposal from the Commission, may authorise any Member State to introduce further exemptions or reductions of excise duties for specific policy considerations.

Exemptions requested under Article 19 of Directive 2003/96/EC must be examined in terms of their compliance with Community policies.

The tax exemption supports the use of low-value solid fuel for energy production instead of land-fill. While energy use is indeed preferable to landfilling from an environmental policy point of view, a correct approach, in line with the polluter-pays principle would consist in applying a lower rate of tax to such low-value solid fuel in line with its energy content. A total exemption is therefore not in the nature and the logic of the system. Given the varied quality and energy content of the material and the consequent difficulties to establish an exact tax rate as well as the small amounts concerned, a complete exemption can be acceptable as a temporary measure.

The requested measure must therefore be of limited duration. Article 19(2) of Directive 2003/96/EC sets that such measure can only be granted for a maximum period of 6 years. The exemption in favour of low-value solid fuel could therefore have effect until 2010. This timeframe also provides an opportunity for the UK authorities to reassess the utility of the exemption from landfill tax in the light of the policy objective to encourage the energy use of low-value solid fuels.

As regards the State aid rules, it must be recalled that they apply irrespective of any approval of an exemption from excise duty. In view of the fact that the estimated total value of the exemption for all beneficiaries taken together is 100 000 GBP, it is in any event unlikely that the value of the exemption for any single beneficiary exceeds the ceiling identified in Commission Regulation (EC) No 69/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to de *minimis* aid.[3].

[3] Commission Regulation (EC) No 69/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to de minimis aid *(*OJ L 10, 13.01.2001, p. 30).

3. DECISION

The Commission proposes that, under Article 19 of Directive 2003/96/EC, the Council authorises the United Kingdom to apply until 1st January 2010 a tax exemption in favour of low value solid fuel.

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authorising the United Kingdom to apply an exemption from climate change levy for low value solid fuel in accordance with Article 19 of Directive 2003/96/EC

(Only the English text is authentic)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity,[4] and in particular Article 19(1) thereof,

Having regard to the proposal from the Commission,[5]

Whereas:

(1) By letter of 18 June 2004, the authorities of the United Kingdom applied to the Commission for a derogation allowing them to continue to apply an exemption from climate change levy (CCL) for low value solid fuel in accordance with Article 19 of Directive 2003/96/EC.

(2) The United Kingdom CCL is designed to encourage energy efficiency and low carbon technologies in the non-domestic sector. It applies to gas, coal, electricity and liquefied petroleum gas used for heating by business and the public sector.

(3) Exemptions from the CCL have been introduced since 2001 to encourage good environmental practice. Solid fuels with a value of less than 15 GBP per tonne, such as the mixed sweepings and debris left from coal and coke mining, have been exempted from the levy.

(4) With the entry into force of Directive 2003/96/EC, Member States which did not tax these fuels have to introduce such taxes.
A tax exemption would support the use of low-value solid fuel for energy production instead of land filling it. While energy use is preferable to landfilling from an environmental policy point of view, the polluter-pays principle would lead to apply a lower rate of tax to such low-value solid fuel, in connection with its energy content. Given the varied quality and energy content of the material and the consequent

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4 OJ L 283, 31.10.2003, p. 51 Directive as last amended by Directive 2004/75/EC (OJL 157, 30.04.2004, p. 100).

5 OJ C […] […], p. […]

difficulties to establish an exact tax rate as well as the small amounts concerned, a complete exemption could be acceptable as a temporary measure. The exemption should therefore be time-limited.

(5) The annual cost to the UK Exchequer of the current relief across the whole sector amounts to approximately 100,000 GBP. In so far as the tax exemption constitutes State aid, the normal rules apply. It appears that the relief is covered by the Commission Regulation (EC) No 69/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to de minimis aid6. Nevertheless, if the benefit to any single undertaking exceeds the ceiling laid down in that regulation, it should be notified to the Commission in accordance with Regulation (EC) 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC7.

(6) The Commission regularly reviews reductions and exemptions to check that they do not distort competition or hinder the operation of the internal market and are not incompatible with Community policy on protection of the environment, energy and transport,

HAS ADOPTED THIS DECISION:

Article 1

The United Kingdom is authorised to apply an exemption of excise duties in favour of low value solid fuel of less than 15 GBP per tonne.

Article 2

This Decision shall expire on 31 December 2009.

Article 3

This Decision is addressed to the United Kingdom of Great Britain and Northern Ireland.

Done at Brussels,

For the Council
The President

6 OJ L 10, 13.01.2001, p. 30.
7 OJ L 83 , 27.03.1999 p. 1 - 9