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Proposal for a

COUNCIL IMPLEMENTING DECISION

authorising France to apply reduced levels of taxation to petrol and gas oil 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 EU 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 France to continue to apply, within defined limits, differentiated levels of taxation to unleaded petrol and gas oil, with the exclusion of commercially² used gas oil. This differentiation is meant to reflect the decentralisation of certain specific powers previously exercised by central government.

The request and its general context

Council Implementing Decision 2013/193/EU³ (hereafter 'Decision 2013/193/EU'), following up on Council Decisions 2011/38/EU⁴ and 2005/767/EC⁵ (hereafter 'Decision 2011/38/EU' and 'Decision 2005/767/EC'), authorised France to apply, until 31 December 2015, reduced levels of taxation to unleaded petrol and gas oil at regional level for the purposes of an administrative reform involving the decentralisation of certain specific powers previously exercised by central government.

Based on that Decision, at present France has the possibility to apply a scheme that allows the French administrative regions to apply a reduced level of taxation to unleaded petrol and gas oil with the exception of commercially used gas oil. The tax in question is the Taxe intérieure de consommation sur les produits énergétiques – Domestic Tax on Petroleum Products (TICPE), which is an excise duty.

By letter dated 20 October 2015, under Article 19 of the Directive, the French authorities requested the renewal of this scheme on identical terms, but for a period of two years from 1 January 2016 to 31 December 2017 and with a smaller authorised amount for the tax reduction.

Operation of the measure

The French Customs Code fixes a maximum tax rates for unleaded petrol and gas oil.

The regions would be allowed to reduce these rates with an amount that, could not exceed EUR 17.7 per 1 000 litres of unleaded petrol, including E10, and EUR 11.5 per 1 000 litres of gas oil throughout the derogation period. Every year, the regional Councils will decide the amount of the reduction by vote, which shows that the decision provides autonomy of the regions and gives an incentive to improve the quality of their administration which cannot be achieved by a transfer from the national budget to the local budgets.

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 Commercial use of gas oil as defined in Article 7(2) and article 7(3) of Directive 2003/96/EC.

³ OJ L 113, 22.04.2013 p.15

⁴ OJ L 19, 22.1.2011, p. 13.

⁵ OJ L 290, 4.11.2005, p. 25.

The level of taxation after reductions can never be lower than the EU minima set in Directive 2003/96/EC and no reduction will apply to gas oil for commercial use.

Control and movement measures for the products concerned

The French authorities clarified that the central government would retain responsibility for collecting and controlling excise duty on gas oil and unleaded petrol, irrespective of the reductions adopted by the regions.

The products would be moved under duty-paid arrangements and the fuels would be taxed when released for consumption at the rate of duty in force in the region to which they are supplied.

To respond to the specific fraud risk identified (diversion of deliveries to benefit from tax differentials between two regions), the logistical chain would be supervised by means of prior identification of recipients by suppliers and notification of this information to the customs administration. The risk analysis indicates that recipients should be divided into three categories: end users with the capacity for bulk storage, service stations and distributors of duty-paid fuel. In the case of a domestic movement of duty-paid fuel, the custom authorities could verify the origin of the product and its region of destination. In cases of atypical routes or inexplicably long transport times, the custom authorities can investigate whether consignments had been diverted from the regional destination initially declared.

Arguments of France concerning the impact on the internal market aspects

The French authorities indicate that the measure would not affect the proper functioning of the internal market, in particular since the scope of the measure is confined to motor fuels for non-commercial use. Moreover, the variations between distribution networks in the retail price of fuel for non-commercial use are greater than the amount of variations that can result from the measure. According to the French authorities, no complaints about distortive effects of the measure have been received during its application.

As regards the exclusion from the scope of the measure of gas oil for commercial use, French or EU road hauliers who meet the conditions for partial refund of excise on gas oil for commercial use would be subject to the same rate of excise duty, irrespective of the region in which they bought the fuel. The planned arrangements would maintain the current refund procedure, completely offsetting the effects of the rate reductions decided on by the regions through equivalent reductions in the amount of the refund on gas oil for commercial use. The measure would not therefore distort competition in the transport sector or affect trade within the EU.

Arguments of France concerning the period of application of the measure

The French Government notes that the experience gained from each renewal of the package of measures has led the Council, on the basis of a proposal from the Commission, to note the total absence of negative consequences resulting from the measure, both for intra-EU trade and for the general level of taxation of fuel in France. In addition, in order for the policies pursued by the regions to be assured stability and a reasonable duration, the French Government would like the renewed exemption to be granted for a period of two years, in accordance with the objective pursued and providing the regional authorities with the visibility necessary for their activities.

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.

According to Decision 2013/193/EU, the national measure in question fulfils this requirement. It follows from the Decision that the regional differentiation of rates, as part of a wider decentralisation policy, aims at the specific policy objective of increasing administrative effectiveness. It was considered that the possibility of regional differentiation offers regions an additional incentive to improve the quality of their administration in a transparent fashion. The same decision requires that the reductions be linked to the objective socio-economic conditions of the regions in which they were applied.

In this regard, the information supplied by France confirmed that a link can indeed be established between application of a regional rate below the national rate and the socio-economic conditions of the regions concerned.

France confirms that the tax reduction will be preceded by a tax increase of the national rate as from 2016.

During the period of application of Decision 2013/193/EU (2013, 2014 and 2015 respectively), France reported that two regions (Poitou-Charentes and Corse) had a differentiated lower rate; The other twenty regions did not apply differentiated lower rates.

The two regions which applied the downward adjustment the reported GDP per capita below the national average in 2013. One of the regions in addition reported a higher unemployment rate compared to the average national level of unemployment in 2013.

It can therefore be concluded that the possibility to modulate the national rate downward seems to have offered the regional authorities the possibility to use the tax in question in a way adapted to the socio-economic circumstances prevalent in their territory.

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

According to Article 19(1), third subparagraph, of the Directive, each request shall be examined taking into account, inter alia, the proper functioning of the internal market, the need to ensure fair competition and Community health, environment, energy and transport policies.

This examination has already been conducted at the occasion of the previous requests by France and this has led to the adoption of Decision 2005/767/EC, Decision 2011/38/EU and Decision 2013/193/EU. As stated in these Decisions, the measures as described thereof were found not to create any obstacles to intra-EU trade; at the same time a number of conditions were fixed in order to ensure that the application of the derogation would not lead to any problem with the functioning of the internal market and would not counteract the achievement of the EU's policy objectives especially in the fields of energy, climate change and environment.

For a possible renewal of the scheme as requested by France, the Commission therefore has to assess whether, in light of the conditions laid down in Article 1(2) and (3) of Decision 2013/193/EU, compliance with the objectives and policies set out in Article 19(1), third subparagraph, of the Directive, has been achieved during its application, so that the same can be predicted, in principle, for the period from 1 January 2016.

In this context, it has also to be verified whether the EU policy context has undergone a relevant change since the adoption of Decision 2013/193/EU or risks to undergo a future change material to the assessment.

- **Consistency with other Union policies**

Internal market and fair competition

The risk of competitive distortions was considered to be low as Decision 2005/767/EC, Decision 2011/38/EU and Decision 2013/193/EU set small maximum amounts for the reductions. Hence, the differentiation of duty rates between regions remains small and might not even exceed price differences between distribution networks. Moreover, commercially used gas oil is excluded from the application of the measure.

As for the levels of differentiation, a strict limit is set namely that the reductions are no greater than EUR 17.7 per 1 000 litres of unleaded petrol or EUR 11.5 per 1 000 litres of gas oil. This condition has been respected by France.

The experience gathered with the application of the derogation does not put into question the assessment reached in 2005, 2011, 2013. The Commission is not aware of any complaints about distortive effects of the measure on intra-EU trade.

No obstacles to the proper functioning of the internal market have been reported either as regards more particularly the circulation of the products in question in their capacity as products subject to excise duty.

This is without prejudice to the application of the Union rules on State aid, notably Article 107(1) and (3) of the Treaty.

Union energy, climate change and environment policies

Taxes on energy products have the effect of lowering the demand for these products and therefore also reduce emissions related to their consumption. The Commission therefore has to assess whether the reduction of rates applied in certain regions does not lead to an increase in fuel consumption (and thus related emissions) that would be in contradiction with the objectives quoted above.

Decision 2013/193/EU noted that the introduction of the possibility for a downward adjustment of rates will be accompanied by an increase in the underlying national rate in France. It concluded that it was unlikely that the overall effect of the new scheme would be a reduced incentive for fuel efficiency since the application of the derogation did not allow regions to go below the rate in force on national level before the introduction of the scheme. Decision 2013/193/EU also concluded that there was little risk that the regional variations would lead to differences in retail prices that would induce traffic detours as the level of differentiation was low and these were superseded by differences in retail prices among distribution networks. It was therefore expected that the measure would not, in principle, come into contradiction with EU energy, climate change and environment policy.

France will apply smaller reduction compared to the the previous years.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

Article 19 of Council Directive 2003/96/EC.

- **Subsidiarity**

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, 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.

The proposal therefore respects the principle of subsidiarity.

- **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 the instrument**

Instrument proposed: 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 France 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 and does not require an impact assessment. The impact on prices and climate is limited as differentiations were low and superseded by differences in retail prices among distribution networks. Consequently, there is little risk that the regional variations would lead to differences in retail prices that would induce traffic detours.

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

5. OTHER ELEMENTS

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

Article 1 - The regions will be allowed to reduce the rates for unleaded petrol and gas oil used as motor fuel with an amount that cannot exceed EUR 17.7 per 1 000 litres of unleaded petrol, including E10 and EUR 11.5 per 1 000 litres of gas oil for a period of two years.

The level of taxation after reductions can never be lower than the EU minima set in Directive 2003/96/EC and no reduction would apply to gas oil for commercial use.

The national measure provided by this decision is part of a policy designed by France to increase administrative effectiveness by improving the quality and reducing the cost of public services, as well as a policy of decentralisation. It offers regions an additional incentive to improve the quality of their administration in a transparent fashion.

Article 2 - The authorisation requested is granted with effect from 1 January 2016 for a period of two years, as requested by France.

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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 electricity⁶, and in particular Article 19 thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) Council Implementing Decision 2013/193/EU (hereafter "Decision 2013/193/EU") authorises France to apply, for a period of three years, reduced levels of taxation to gas oil and unleaded petrol used as motor fuel for the purposes of an administrative reform involving the decentralisation of certain specific powers previously exercised by central government. Decision 2013/193/EU expires on 31 December 2015.
- (2) By letter dated 20 October 2015, France requested authorisation to allow the French regions to continue to apply reductions to the rates of taxation no greater than EUR 17.7 per 1 000 litres of unleaded petrol and EUR 11.5 per 1 000 litres of gas oil for further two years after 31 December 2015.
- (3) Decision 2013/193/EU, which was adopted on the basis that the measure requested by France, met the requirements set out in Article 19 of Directive 2003/96/EC, allowing exclusively tax exemptions or reductions for specific policy reasons. In particular, it was considered that the measure would not hinder the proper functioning of the internal market. It was also considered that it was in conformity with the relevant Union policies.
- (4) The national measure is part of a policy designed to increase administrative effectiveness by improving the quality and reducing the cost of public services, as well as a policy of decentralisation. France intends to offer its regions an additional incentive to improve the quality of their administration in a transparent fashion. In this respect, Decision 2013/193/EU requires that the reductions be linked to the objective socio-economic circumstances of the regions in which they are applied. Consequently, a number of regions with either lower than average GDP or higher than average unemployment have applied lower rates. Overall, the national measure is based on specific policy considerations.
- (5) The tight limits set for the reduction of rates on a regional basis as well as the exclusion of commercial gas oil used as propellant from the measure imply that the risk of competitive distortions in the internal market is very low. No obstacles to the

⁶ OJ L 283, 31.10.2003, p. 51.

proper functioning of the internal market have been reported as regards, more particularly, the circulation of the products in question in their capacity as products subject to excise duty.

- (6) The measure will be preceded by a tax increase. Against this background and in light of the conditions of the authorisation as well as experience gathered, the national measure does not, at this stage, appear to be in conflict with EU energy and climate change policies.
- (7) It follows from Article 19(2) of Directive 2003/96/EC that each authorisation granted under this Article must be strictly limited in time. France requested that the authorisation is granted for a period of two years. It is therefore appropriate to limit the period of application of this Decision to two years.
- (8) 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 2016, under Decision 2013/193/EU. The authorisation requested should therefore be granted with effect from 1 January 2016.
- (9) This Decision is without prejudice to the application of the Union rules regarding State aid,

HAS ADOPTED THIS DECISION:

Article 1

1. France is hereby authorised to apply reduced rates of taxation to unleaded petrol and gas oil used as motor fuel. Commercial gas oil used as propellant within the meaning of Article 7(2) of Directive 2003/96/EC shall not be eligible for any such reductions.
2. Administrative regions may be permitted to apply differentiated reductions provided the following conditions are fulfilled:
 - (a) the reductions are no greater than EUR 17.7 per 1 000 litres of unleaded petrol or EUR 11.5 per 1 000 litres of gas oil;
 - (b) the reductions are no greater than the difference between the levels of taxation of non-commercial gas oil used as propellant and commercial gas oil used as propellant;
 - (c) the reductions are linked to the objective socio-economic conditions of the regions in which they are applied.
 - (d) the application of regional reductions does not have the effect of granting a region a competitive advantage in intra-Union trade.
3. The reduced rates must comply with the requirements of Directive 2003/96/EC, and in particular the minimum rates laid down in Article 7 thereof.

Article 2

This Decision shall be applicable from 1 January 2016 and shall expire on 31 December 2017.

Article 3

This Decision is addressed to the French Republic.

Done at Brussels,

*For the Council
The President*