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Proposal for a

**COUNCIL IMPLEMENTING DECISION**

**authorising Sweden to apply reduced excise duty rates on electricity consumed by households and service sector companies situated in certain areas in the North of Sweden in accordance with Article 19 of Directive 2003/96/EC**

## EXPLANATORY MEMORANDUM

### **1. CONTEXT OF THE PROPOSAL**

#### **1.1. Reasons for and objectives of the proposal**

Taxation of energy products and electricity in the Union is governed by Council Directive 2003/96/EC<sup>1</sup> (hereafter referred to as 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 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 Sweden to apply, within defined limits, a reduced rate of excise duty on electricity consumed by households and service sector companies in certain areas in the North of Sweden. The objective of this measure is to compensate for higher heating costs in these areas caused by the specific climatic conditions of the region.

Article 19(1) of the Directive envisages that 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.

Council Decision 2012/47/EU authorises Sweden to apply a reduced excise duty rate to electricity consumed by households and service sector companies situated in certain municipalities listed in the annex to the Decision. The tax reduction is to be proportionate to the extra heating costs due to the northern location, in comparison with the rest of Sweden and the reduced rate has to comply with the requirements of Directive 2003/96/EC, and in particular the minimum levels of taxation laid down in Article 10 of that Directive. This authorisation expires on 31 December 2017.

By letter dated 10 May 2017, under Article 19 of the Directive, the Swedish authorities have informed the Commission that they intend to continue to apply this reduced excise duty rate. The reduction shall not exceed SEK 96 per MWh, or approximately EUR 10<sup>2</sup> per MWh. Sweden has requested for the reduction to be authorised for a period of six years, i.e. until 31 December 2023, which is the maximum period indicated in Article 19(2) of the Directive.

Sweden has provided additional information and clarifications on 1 September 2017.

Sweden justifies the measure by environmental as well as regional and cohesion policy objectives. Sweden underlines the fact that national excise duty rates on electricity considerably exceed the minimum levels of taxation as prescribed in Directive 2003/96/EC and that therefore a stronger incentive for energy efficiency is provided through the tax system on national level than required by the EU minimum rates. However, according to the Swedish authorities this high general level of taxation can only be maintained if the northern areas, which are placed at a competitive disadvantage due to climatic conditions, are afforded a tax reduction. At the same time, the measure would mitigate differences in costs of heating between different parts of the country and thereby contribute to the objectives of the EU's regional and cohesion policies.

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<sup>1</sup> 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.

<sup>2</sup> Based on the exchange rate of 2 October 2017 (SEK 9.6055 = EUR 1), cf. Art. 13(1) of Directive 2003/96/EC and OJ C 331, 3.10.2017, p. 3.

As regards the nature of the disadvantage caused by the climatic differences, the Swedish authorities have reiterated the statement made in earlier requests that heating costs are, on average, 30 % higher in the northern regions as the heating period in these areas is longer.

The loss of revenue ensuing from the reduction of SEK 96 per MWh is estimated to amount to SEK 710 million p.a., or EUR 74 million.

(1) *Operation of the measure*

The measure is granted in the form of a reduced excise duty rate on electricity. This reduced rate applies directly when the tax is levied.

*Scope*

The Swedish authorities have stated that the geographic differentiation was introduced on the basis of objective data relating to average temperatures during the heating period. On this basis, a reduced excise duty rate on electricity applies in all the municipalities of the counties Norrbotten, Västerbotten and Jämtland, and in the municipalities of Sollefteå, Ånge, Örnsköldsvik, (in Västernorrland county), Ljusdal (in Gävleborg county), Malung-Sälen, Mora, Orsa, Älvdalen (in Dalarna county) and Torsby (in Värmland county). The measure is limited to households and service sector companies, for which a standard excise duty rate on electricity of SEK 325, or EUR 33,83 per MWh would apply. As the electricity consumed by the manufacturing industry is in any case taxed at a lower rate of EUR 0.50 (SEK 5) per MWh, the measure in question does not affect companies from this sector.

The measure affords electricity consumer groups in those parts of the country the same conditions as the same consumer groups in southern Sweden.

(2) *Arguments of the Swedish authorities concerning the impact of the measure on the internal market*

The Swedish authorities do not think that the measure would affect the proper functioning of the internal market. They consider that, although the measure might have an effect on trade between Member States by reducing the costs of service sector companies in certain areas in the North of Sweden, this effect would remain limited as most service-sector companies normally operate within a limited geographical area.

(3) *Existing provisions in the area of the proposal*

Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity.

## **1.2. Consistency with existing policy provisions in the policy area**

(1) *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 measure envisaged by Sweden consists in reducing excise duty on electricity consumed by households and service sector companies in certain areas in the North of Sweden. The Swedish authorities underline two objectives of the measure. First, they submit that the reduced excise duty rate has an indirect positive environmental effect by allowing Sweden to

apply a higher tax rate to the rest of the country, which would otherwise have to be reduced because of the special case of northern Sweden. In this regard, the Commission notes that environmental protection requirements as such are already an integral part of Directive 2003/96/EC<sup>3</sup> and therefore do not in themselves qualify as specific policy considerations. However, the Directive does not, in a general way, allow for addressing the specific needs of regions with very particular climatic conditions. In such a context, the aim of contributing to the maintenance of a relatively high level of taxation by avoiding, through a reduced rate, otherwise excessive burdens in regions subject to such conditions can therefore be considered a specific policy consideration.

Secondly, Swedish authorities submit that the reduction approximates the overall costs of heating for consumers in certain areas in the North of Sweden with the costs borne by consumers in other parts of the country and therefore pursues regional and cohesion policy objectives.

On this point, equally, the requested authorisation can be considered as based on specific policy considerations.

### **1.3. Consistency with other Union policies**

The standard excise duty rate on electricity applicable to households and service sector companies in Sweden is SEK 325, or EUR 33,83 per MWh<sup>4</sup>. With the proposed reduction, the applicable rate in certain areas in the North of Sweden is at least SEK 229 per MWh or EUR 26,13 per MWh. Since the levels of taxation on electricity are well above the minimum levels both in the North of Sweden and in the rest of the country, it is plausible to assume that the tax reduction in question does in fact indirectly contribute to the achievement of a higher overall level of environmental protection in the way described by the Swedish authorities.

In this context, the aim of the measure is to partly counterbalance the higher costs of heating in the areas to which the reduced excise duty rate applies. According to the Swedish authorities, the climatic conditions in these areas lead to a consumption of electricity that is, on average, around 30 % higher than in the rest of the country, mainly due to a longer heating period.

In this regard, the Commission notes that on the basis of recent electricity prices in Sweden the price reduction following from the proposed measure would be significantly less than 25 % for all relevant consumer groups. Based on the most recent price data available from Eurostat, this reduction ranges from 2,7 % to 7 %, depending on the level of consumption of the households<sup>5</sup>.

The amount of the relief therefore remains below the additional costs of heating in the regions concerned. As a result, the fiscal incentive to use energy efficiently is maintained at a level at least equal to the one prevailing in the rest of Sweden.

The measure is compatible with the health, environment, energy and transport policies of the Union.

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<sup>3</sup> Cf. in particular recitals (6) and (7).

<sup>4</sup> Based on Art. 5 of Directive 2003/96/EC, Member States may apply differentiated rates of taxation between business and non-business use. On the basis of Art. 11(4) of Directive 2003/96/EC, Member States may limit the scope of the reduced level of taxation for business use. Based on the information provided by Sweden, it has limited the scope of the business use rate for electricity to the manufacturing sector. As a consequence, the tax rate for non-business use is applied both to households and to service sector companies. The EU minimum level of taxation for non-business use is EUR 1 per MWh

<sup>5</sup> Source: Eurostat price figures for second semester of 2016. The figures are for non-industrial use of domestic consumers with annual consumption of less than 1 MWh to domestic consumers with annual consumption of more than 15 MWh.

Under the circumstances described, the measure also appears acceptable in view of the proper functioning of the internal market and the need to ensure fair competition. In particular, due to the remote nature of the areas to which it applies and the fact that it is limited to households and service sector companies, it is not expected that it will lead to significant distortions of competition or changes in trade patterns between Member States. Finally, it is recalled that a tax reduction for the areas in question has been in operation for thirty years without this giving rise, as far as the Commission is aware, to any problems in relation to the proper functioning of the internal market or other objectives of EU policy.

After the reduction envisaged by the Swedish authorities, the excise duty rates on electricity in the regions concerned will still respect the minimum level of taxation pursuant to Article 10 of Directive 2003/96/EC. Provided that the measure respects the conditions laid down in Article 44 of the General Block Exemption Regulation (Regulation (EC) No 651/2014/EU)<sup>6</sup> the measure is, by consequence, exempt from the prior notification requirement.

(1) *Period of application of the measure and development of the EU framework on energy taxation*

The Commission suggests that the period of application is set to the maximum allowed by Directive 2003/96/EC, i.e. six years. This period seems appropriate in order to provide the consumers concerned with a sufficient degree of certainty.

## **2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY**

### **2.1. Legal basis**

Article 19 of Council Directive 2003/96/EC.

### **2.2. Subsidiarity (for non-exclusive competence)**

The field of indirect taxation covered by Article 113 of the Treaty on the Functioning of the European Union 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.

### **2.3. Proportionality**

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

### **2.4. Choice of the instrument**

Instrument proposed: Council Implementing Decision.

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

### **3.1. Ex-post evaluations/fitness checks of existing legislation**

The measure does not require the evaluation of existing legislation.

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<sup>6</sup> Commission Regulation 651/2014/EU declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (OJ L 187, 26.6.2014, pp. 1–78).

### **3.2. Stakeholder consultations**

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

### **3.3. Collection and use of expertise**

There was no need for external expertise.

### **3.4. Impact assessment**

This proposal concerns an authorisation for an individual Member State upon its own request and does not require an impact assessment.

The information provided by Sweden suggests that the measure would have a limited impact on tax revenues and the excise duty rate on electricity in the North of Sweden would still be above the minimum level of taxation set in Directive 2003/96/EC. Sweden expects the measure to have a positive impact on the achievement of its social and cohesion policy goals.

### **3.5. Regulatory fitness and simplification**

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

### **3.6. 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**

### **5.1. Detailed explanation of the specific provisions of the proposal**

Article 1 - Sweden will be allowed to continue applying a reduced rate of excise duty on electricity in certain northern areas.

The level of taxation after reductions can never be lower than the EU minima set in Directive 2003/96/EC and the reduction would apply for all electricity consumers paying the standard excise duty rate in the North of Sweden.

The measure would help the disadvantaged regions to mitigate the higher costs of electricity due to the cold climate.

Article 2 - The authorisation requested is granted with effect from 1 January 2018 for a period of six years, as requested by Sweden.

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**COUNCIL IMPLEMENTING DECISION**

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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<sup>7</sup>, and in particular Article 19(1) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) Council Implementing Decision 2012/47/EU<sup>8</sup> authorises Sweden to apply, until 31 December 2017, a reduced rate of excise duty to electricity consumed by households and service sector companies in certain areas in the North of Sweden pursuant to Article 19 of Directive 2003/96/EC.
- (2) By letter of 10 May 2017 Sweden requested authorisation to continue to apply a reduced rate of excise duty to electricity consumed by the same beneficiaries for a period of six more years, that is until 31 December 2023. The reduction is to be limited to SEK 96 per MWh. By letter of 1 September 2017 Sweden sent additional information and clarifications.
- (3) In the areas concerned, the costs of heating are on average 30 % higher than in the rest of the country, due to the longer heating period. Reducing the costs of electricity for households and service sector companies in these areas therefore narrows the gap between overall costs of heating for consumers in the North of Sweden and those borne by consumers in the rest of the country. The measure therefore contributes to achieving regional and cohesion policy objectives. The tax reduction should not exceed what is necessary to compensate for the additional costs of heating for households and service sector companies in certain areas in the North of Sweden.
- (4) The reduced rates of taxation will be above the minimum rates laid down in Article 10 of Directive 2003/96/EC.
- (5) In view of the remote nature of the areas to which it applies, the fact that the reduction should not exceed the additional costs of heating in the North of Sweden and the limitation of the measure to households and service sector companies, the measure is not expected to lead to significant distortions of competition or changes in trade between Member States.

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<sup>7</sup> OJ L 283, 31.10.2003, p.51.

<sup>8</sup> OJ L 26, 28.01.2012, p. 33.

- (6) 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. It is also compatible with the Union's health, environment, energy and transport 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. In order to provide the consumers concerned with a sufficient degree of certainty, the authorisation should be granted for a period of six years.
- (8) It is important to ensure that the authorisation granted under Decision 2012/47/EU continues to apply in order to avoid creating a gap between the expiry of that Decision and the taking effect of this Decision.
- (9) This decision is without prejudice to the application of the Union rules regarding State aid,

HAS ADOPTED THIS DECISION:

*Article 1*

1. Sweden is hereby authorised to apply a reduced excise duty rate to electricity consumed by households and service sector companies situated in the municipalities listed in the Annex.

The reduction from the standard national excise duty rate for electricity shall not exceed what is necessary to compensate for the extra heating costs due to the northern location, in comparison with the rest of Sweden, and shall not exceed SEK 96 per MWh.

2. The reduced rates must comply with the requirements of Directive 2003/96/EC, and in particular with the minimum rates laid down in Article 10 thereof.

*Article 2*

This Decision shall apply from 1 January 2018 until 31 December 2023.

*Article 3*

This Decision is addressed to the Kingdom of Sweden.

Done at Brussels,

*For the Council  
The President*