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Proposal for a

COUNCIL IMPLEMENTING DECISION

**authorising the United Kingdom to apply differentiated levels of taxation to motor fuels
in certain geographical areas pursuant to Directive 2003/96/EC**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

Grounds for and objectives of the proposal

Taxation of energy products and electricity in the Union is governed by Council Directive 2003/96/EC ⁽¹⁾ (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 the UK to introduce a reduced rate of excise duty on motor fuels used as propellant (namely unleaded petrol and gas oil) in the following geographical areas defined in the request of the UK by references to postcodes: IV54 (Strathcarron, Highland - Scotland), IV26 (Ullapool, Highland - Scotland), IV27 (Lairg, Highland – Scotland), NE48 (Hexham, Northumberland - England), PH41 (Mallaig, Highland - Scotland), KW12 (Halkirk, Highland – Scotland), PA80 (Oban, Argyll and Bute – Scotland), PH36 (Acharacle, Highland – Scotland), IV22 (Achnasheen, Highland - Scotland), PA38 (Appin, Argyll and Bute – Scotland), PH23 (Carrbridge, Highland - Scotland), PH19 (Dalwhinnie, Highland - Scotland), IV21 (Gairloch, Highland - Scotland), LA17 (Kirkby-in-Furness, Cumbria - England), EX35 (Lynton, Devon - England), IV14 (Strathpeffer, Highland - Scotland), the area covered by the post town of Hawes (in North Yorkshire - England).

According to the information provided by the UK authorities the postal codes allow for a clear definition of the territorial scope of the measure. The postal code system is common to England, Scotland, Wales and Northern Ireland. In the UK post towns and postcode districts cover a number of settlements in an area. In rural areas, the largest centre of the population in a postcode district or post town is likely to be a village. Towns and districts vary in size, for example, IV27 is the largest postcode district in the UK, at 3 397 km². This differs significantly from NE48 which is around 750 km². The derogation request refers to the nearest post towns of the selected areas as well as the wider local authority in the area. The derogation request for IV21 (Gairloch, Highland - Scotland) e.g., means that the post town in IV21 is Gairloch and the local authority is Highland – Scotland. Post towns are often made up of one or more villages, the post towns are often named after one of the villages located within them.

The table below sets the names and the numbers of the post towns and villages covered by the postcode districts listed in the application:

Postcode District	Post Town (s)	Villages
PH36	1: Acharacle	6: Acharacle, Strontian, Kilchoan, Salen, Glenborrodale, Achateny
IV22	1: Achnasheen	4: Achnasheen, Poolewe, Laide, Kinlochewe
IV21	1: Gairloch	5: Gairloch, Badachro, Melvaig, Big Sand, Port Henderson
PH19	1: Dalwhinnie	1: Dalwhinnie

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.

PH23	1: Carrbridge	2: Carrbridge, Bogroy
IV14	1: Strathpeffer	3: Strathpeffer, Contin, Jamestown
PA38	1: Appin	3: Appin, Duror, Portnacroish
LA17	1: Kirkby-in-Furness	1: Kirkby-in-Furness
EX35 ⁽²⁾	2: Lynton and Lynmouth	3: Barbrook, Brendon, Lynmouth
IV54	1: Strathcarron	4: Strathcarron, Locharron, Applecross, Shildaig
IV26	1: Ullapool	1: Achiltibuie
IV27	<i>n/a</i>	7: Lairg, Durness, Tongue, Scourie, Lochinver, Kinlochbervie, Talmine
PH41	<i>n/a</i>	2: Mallaig, Inverie
KW12	1: Halkirk	1: Halkirk
PA80	<i>n/a</i>	3: Lochaline, Morvern, Drimnin
NE48	<i>n/a</i>	7: Bellingham, Falstone, Kielder, Wark, Tarsset, West Woodburn, Barrasford

Postcode district	Post town	Villages
<i>n/a</i>	Hawes	2: Gayle, Butterset

In some cases (IV 27, PH41, PA80, NE48) postcode districts do not contain a complete post town, so only the list of the villages has been provided. For most of the areas on the list, the postal town and postcode district are aligned.

According to the information provided by the UK the price of fuel in the areas which are to benefit from the measure is on average GBP 100 (app. EUR 128.5) ⁽³⁾ higher per 1 000 litres than the average in the rest of the UK. Higher prices in these areas are due to higher transport and distribution costs, and low population. The objective of the measure is to offer some mitigation against the high costs of motor fuels in the specified areas.

General context

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.

By letter dated 2 February 2014 the UK authorities informed the Commission that they intend to apply a reduced rate to unleaded petrol and gas oil offered for sale as propellants in the geographical areas mentioned above. The reduced rate of the excise duty on the fuels used as propellant will be GBP 50 (app. EUR 64.3) per 1 000 litres lower than the standard rate in the UK (GBP 580 or app. EUR 745.3) applicable to both petrol and gas oil. This would mean that the reduced rate would still be far above the current EU minimum per 1 000 litres of EUR 359

² The postcode district of EX35 contains two post towns – Lynton and Lynmouth. Both of these post towns would benefit from the rebate.

³ All calculations are based on the exchange rate on 1 October 2014, i.e. GBP 0.77820 for EUR 1. Cf. OJ C 344, 2.10.2014.

for unleaded petrol and EUR 330 for gas oil. Additional information and clarifications were provided by the UK authorities on 3 June and 17 September 2014.

The UK has requested for the reduction to be granted for a period of six years, which is the maximum period indicated in Article 19(2) of the Directive.

According to the UK authorities, the price of fuel in the above mentioned areas is around GBP 100 (app. EUR 128.5) per 1 000 litres higher than the average for the rest of the UK. The price in these areas is in line with the pump prices on the islands if one disregards the tax reduction as for which the UK applies a tax reduction as provided for by Council Implementing Decision 2011/776/EU⁴. A reduction of GBP 50 (app. EUR 64.3) per 1 000 litres would not cover the full price difference, but would provide consumers with some compensation for the higher price which they have to bear.

In assessing the eligibility of the areas concerned for the rebate, two key factors have been taken into consideration:

- The affordability of fuel, caused by high pump prices and weekly earnings below the average for the UK.
- The necessity of road fuel as part of everyday life for individuals. This is demonstrated by high car dependency and limited accessibility to public transport and essential services.

According to the statistical information provided by the UK authorities the average weekly earnings in the local authorities, where the areas selected are situated, range from GBP 412.10 (EUR 528.6) to GBP 493.30 (EUR 633.9) which is below the UK average of GBP 518⁽⁵⁾ (EUR 665.6). Local authorities for which statistical data is collected normally have a larger geographical scope than the areas for which the measure will apply. According to the UK authorities it can be assumed that the actual average weekly earnings in the areas in question are even lower than the figures available for the local authorities. This is due to the presence of larger corporations in the main settlements within the local authorities, often more than 100 miles (app. 160 km) from the selected areas in question. The income streams in the areas covered by the measure depend on agriculture and tourism. So the UK authorities assume that the weekly earnings in these areas are lower than the earnings in the islands that currently apply the derogation (GBP 463.0-EUR 752.8).

According to data provided by the UK's Office for National Statistics, the Gross Value Added per head in the areas in question ranges between GBP 12 036 (EUR 15 466.5) and GBP 17 936 (EUR 23 048) and are lower than the UK average GBP 21 674 (EUR 27 851.5) per year.

According to the UK authorities, the limited economic opportunity in these areas compared to more urbanised areas of the UK leads to emigration of economically active population which is the main reason for the stable rate of unemployment which does not necessarily reflect the quality of life in these areas. Economically, the key impacts of low population densities over large geographical areas are:

⁴ Council Implementing Decision 2011/776/EU of 24 November 2011 authorising the United Kingdom to apply reduced levels of taxation to motor fuels supplied on the islands of the Inner and Outer Hebrides, the Northern Isles, the islands in the Clyde and the Isles of Scilly, in accordance with Article 19 of Directive 2003/96/EC (OJ L 317, 30.11.2011, p. 34–35).

⁵ Cf. with the information provided by the UK's Office for National Statistics: '<http://www.nomisweb.co.uk/default.asp>'.

- The average distances between individual services and businesses are very high, so that the transport costs of undertaking basic activities are also relatively high - for both individuals and businesses.
- Businesses have a smaller population catchment to draw upon within the same geographic area, and therefore have to operate at generally higher unit margins in order to retain a profit from a limited turnover.

Furthermore, a number of refineries in the UK have closed down in recent years. The reduction in the number of refineries has led to greater number of filling stations falling further than 100 miles (app. 160 km) from their nearest refinery, leading to an increase of the costs for transportation of fuel to the areas in question.

Bus availability in all the rural areas concerned is significantly lower than the average for Great Britain⁽⁶⁾. This, coupled with the limited use of trains in the areas concerned, and high car usage despite high pump prices, highlights the necessity of cars as a means of transport in the areas.

Services in remote, rural areas of the UK, such as the areas selected, are likely to serve a larger geographical area than those in urban settlements, in part due to the low population densities of these areas. This means that the average distances between individual dwellings, settlements, services and businesses are very high, so that the transport costs of undertaking basic activities are also relatively high. As an example, a trip from the area covered by poste code IV27 to the nearest standard-sized supermarket can involve a return trip of up to 135 miles (app. 220 km).

The challenges set out above reflect both the necessity of car use in the everyday lives of residents in the areas selected, and the impact of high fuel prices on them. The UK considers that the fuel duty rebate would help sustain these fragile and remote rural communities by relieving them slightly of these particularly high living costs. It is important that these factors are not considered in isolation, but rather, as a combination of issues which has led to a real social and economic need for the rebate in the areas listed.

Operation of the measure

In the UK, excise duty on road fuels is accounted for at the point when the fuel leaves the refinery, when it is imported or when it leaves an excise warehouse. At this point it would be difficult to identify the amount of fuel destined for eligible regions.

Therefore, the relief will be given at the point of sale on the eligible areas, thus avoiding any risk arising from diversion of reduced rate fuel. Fuel retailers in the concerned areas would be registered with HM Revenue and Customs (HMRC) as approved retailers and would be required to reduce the price of a litre of fuel by the amount of the duty relief. They would in turn be entitled to claim a refund of duty from HMRC, on a periodic basis, based on the litres of fuel sold.

Beneficiaries

The measure is aimed at private individuals but all purchases, including commercial will benefit from the lower price.

All 27 filling stations that could benefit from the scheme are independent.

⁶ Cf. <https://www.gov.uk/government/statistical-data-sets/nts99-travel-by-region-and-area-type-of-residence>'.

Arguments of the UK authorities concerning the impact of the measure on the internal market

The UK authorities do not think that the measure would affect the proper functioning of the internal market.

Comparing the prices of the filling stations in the proposed tax reduction with GBP 50 per 1 000 litres (EUR 64.3) with those of their nearest competitors outside the scheme:

For petrol, the average differential is reduced to GBP 10 (EUR 12.9). On average, sites within the scheme would be GBP 10 (EUR 12.9) more expensive than their nearest counterparts outside the scheme.

For diesel, the average differential becomes GBP 6 (EUR 7.7). On average, sites within the scheme would be GBP 6 per 1 000 litres (EUR 7.7) cheaper than their nearest counterparts outside the scheme.

The rebate would bring the stations affected broadly in line with the stations in nearby areas that are not in the scheme. As such, it is not expected that consumers will change driving routes or that filling stations in areas bordering beneficiaries will reallocate to the areas included. Furthermore the low population densities and distances from major settlements, along with the significant capital costs of new filling stations, would not make it commercially attractive for filling stations to re-locate, even with the rebate.

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.

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 measure envisaged by the UK consists in reducing excise duty on motor fuels supplied in certain parts of its territory defined by a postcode, namely PH36, IV22, IV21, PH19, PH23, IV14, PA38, LA17, Hawes, EX35, IV54, IV26, IV27, PH41, KW12, PA80, NE48.

The aim is to bring pump prices in these territories closer to the UK average. The higher per unit costs and thus pump prices in these areas are due to higher transportation and distribution costs and lower economies of scale.

It can be concluded that the wish to apply a reduced excise duty rate on motor fuels in the areas concerned on account of their specific economic and social conditions is based on specific policy considerations in particular as regards social and regional policy.

Consistency with the other policies and objectives of the Union

The aim of the measure is to partly counterbalance the higher per unit cost, and thus pump prices, of fuel in the areas concerned, through a direct duty relief at the point of sale.

The measure is limited to what is needed to this effect. In particular, the relief is confined to the (relatively small) amount of fuel sold in the areas, the total volume used in the postal areas

is less than 50 million litres a year which accounts for 0.1 % of total fuel consumption in the UK.

The Commission notes that the excise duty rate will be reduced by GBP 50 per 1 000 litres (EUR 64.3) of product. The price of fuel in the selected areas listed is around GBP 100 (EUR 128.5) higher than the average for the rest of the UK. In the final quarter of 2012, the prices in these towns were above the minimum price on the islands currently applying a tax reduction on the basis of Council Implementing Decision 2011/776/EU. The price characteristics of these towns are similar to those on the islands where the tax reduction applies. A GBP 50 (EUR 64) relief is unlikely to cover the full differential between these high prices and the UK average, but would provide individuals with some compensation for the higher price which they have to bear.

Finally, despite the relief, the tax burden borne by fuel consumed in the geographic areas concerned will remain well above the minimum levels of taxation set out in Directive 2003/96/EC.

It can thus be concluded that while the measure at hand constitutes a tax reduction to fossil fuel which in principle should be reviewed critically. Under the specific geographical and social conditions it can be considered acceptable in the wider policy context of the health, environment, energy and transport policies of the Union.

Under the circumstances described, it 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 moderate reduction in the rate, it is not expected that it will lead to changes in fuel consumption, through the attraction of consumers from outside these areas.

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 allow the UK authorities to gather information to assess the results of the measure and provide businesses and consumers benefiting from the measure with a sufficient degree of certainty.

State aid rules

After the reduction envisaged by the UK authorities, the tax rates on unleaded petrol and gas oil in the regions concerned will still respect the minimum level of taxation pursuant to Article 7 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)⁷) the measure, by consequence is exempt from the prior notification requirement.

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

Consultation of interested parties

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

Collection and use of expertise

There was no need for external expertise.

⁷ 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, p. 1–78.).

Impact assessment

This proposal concerns an authorisation for an individual Member State upon its own request.

3. LEGAL ELEMENTS OF THE PROPOSAL

Subsidiarity principle

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, the exercise by Member States of their competences in this field is strictly circumscribed and limited by existing EU law. Pursuant to Article 19 of Directive 2003/96/EC, only the Council is empowered to authorise a Member State to introduce further exemptions or reductions within the meaning of that provision. Member States cannot substitute themselves for the Council.

The proposal therefore respects the principle of subsidiarity.

Nevertheless, the present proposal, as a non-legislative proposal, is not subject to the review mechanism of Protocol n. 2 to the TFEU, which only applies to draft legislative acts.

Proportionality principle

The proposal respects the principle of proportionality. The tax reduction does not exceed what is necessary to attain the objective in question (cf. the considerations on the internal market and fair competition aspects, above).

Choice of instruments

Instrument(s) proposed: Council Implementing Decision.

Article 19 of Directive 2003/96 makes provision for this type of measure only.

4. BUDGETARY IMPLICATION

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

Proposal for a

COUNCIL IMPLEMENTING DECISION

authorising the United Kingdom to apply differentiated levels of taxation to motor fuels in certain geographical areas pursuant to Directive 2003/96/EC

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 thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) By letter of 2 February 2014 the United Kingdom requested authorisation to apply a reduced rate of excise duty on gas oil and unleaded petrol pursuant to Article 19 of Directive 2003/96/EC in the following geographical areas defined by a postcode where appropriate: IV54 (Strathcarron, Highland - Scotland), IV26 (Ullapool, Highland - Scotland), IV27 (Lairg, Highland - Scotland), NE48 (Hexham, Northumberland - England), PH41 (Mallaig, Highland - Scotland), KW12 (Halkirk, Highland - Scotland), PA80 (Oban, Argyll and Bute - Scotland), PH36 (Acharacle, Highland - Scotland), IV22 (Achnasheen, Highland - Scotland), PA38 (Appin, Argyll and Bute - Scotland), PH23 (Carrbridge, Highland - Scotland), PH19 (Dalwhinnie, Highland - Scotland), IV21 (Gairloch, Highland - Scotland), LA17 (Kirkby-in-Furness, Cumbria - England), EX35 (Lynton, Devon - England), IV14 (Strathpeffer, Highland - Scotland), the area covered by the post town of Hawes (in North Yorkshire - England). The United Kingdom provided additional information and clarifications on 3 June and 17 September 2014.
- (2) In these areas, the prices of gas oil and unleaded petrol are higher than the average prices in the rest of the territory of the United Kingdom, placing local fuel consumers at a disadvantage. The price difference is due to additional per unit costs induced by the geographic location of the areas, their low population numbers and the delivery of relatively low volumes of fuel.
- (3) The reduced rates of taxation will be above the minimum rates laid down in Article 7 of Directive 2003/96/EC.
- (4) In view of the specific nature of the areas to which it applies and the moderate reduction in the rate, which only partially alleviates the higher costs incurred in the geographical areas in question, the measure is not expected to give rise to any movement specifically linked to the supply of fuel.
- (5) 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 and it is

¹ OJ L 283, 31.10.2003, p. 51.

compatible with the European Union's health, environment, energy and transport policies.

- (6) In accordance with Article 19(2) of Directive 2003/96/EC each authorisation granted under that Article must be strictly limited in time. In order to provide the businesses and consumers concerned with a sufficient degree of certainty, the authorisation should be granted for a period of six years. However, in order not to undermine future general developments in 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 authorisation granted in this Decision would not be adapted, this Decision should expire on the day on which the rules on that modified system become applicable.
- (7) This decision is without prejudice to the application of the Union rules regarding State aid,

HAS ADOPTED THIS DECISION:

Article 1

1 The United Kingdom is hereby authorised to apply reduced rates of taxation to unleaded petrol and gas oil supplied as motor fuel to road vehicles in the following 17 areas, defined by a postcode where appropriate: IV54 (Strathcarron, Highland - Scotland), IV26 (Ullapool, Highland - Scotland), IV27 (Lairg, Highland - Scotland), NE48 (Hexham, Northumberland - England), PH41 (Mallaig, Highland - Scotland), KW12 (Hallkirk, Highland - Scotland), PA80 (Oban, Argyll and Bute - Scotland), PH36 (Acharacle, Highland - Scotland), IV22 (Achnasheen, Highland - Scotland), PA38 (Appin, Argyll and Bute - Scotland), PH23 (Carrbridge, Highland - Scotland), PH19 (Dalwhinnie, Highland - Scotland), IV21 (Gairloch, Highland - Scotland), LA17 (Kirkby-in-Furness, Cumbria - England), EX35 (Lynton, Devon - England), IV14 (Strathpeffer, Highland - Scotland), the area covered by the post town of Hawes (in North Yorkshire - England).

In order to avoid any overcompensation, the reduction from the standard national rate of taxation for unleaded petrol or gas oil respectively shall be no greater than the additional cost of retail sales in these geographical areas, compared with the average cost incurred of retail sales in the United Kingdom and shall be no more than GBP 50 (EUR 64) per 1 000 litres of product.

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 7 thereof.

Article 2

This Decision shall take effect on the day of its notification. It shall apply from 1 February 2015 and shall expire on 31 January 2021.

However, 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 the rules on this modified system become applicable.

Article 3

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

Done at Brussels,

*For the Council
The President*