II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 17 February 2005

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

(2005/153/EC)

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 [1], and in particular Article 19(1) thereof,

Having regard to the proposal from the Commission,

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 were introduced in 2001 to encourage good environmental practice. Solid fuels with a value of less than GBP 15 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.

(5) A tax exemption would support the use of low-value solid fuel for energy production instead of landfilling it. While energy use is preferable to landfilling from an environmental policy point of view, the polluter-pays principle would lead to the application of 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 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.

(6) The annual cost to the UK Exchequer of the current relief across the whole sector amounts to approximately GBP 100 000. Insofar as the tax exemption constitutes State aid, the normal rules apply. It appears that the relief is covered by 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 [2]. 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) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty [3].

[1] OJ L 283, 31.10.2003, p. 51. Directive as last amended by Directive 2004/75/EC (OJ L 157, 30.4.2004, p. 100).

[2] OJ L 10, 13.1.2001, p. 30.

[3] OJ L 83, 27.3.1999, p. 1.

(7) 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 hereby authorised to apply an exemption from excise duties in favour of low-value solid fuel of less than GBP 15 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, 17 February 2005.

For the Council

The President

J.-C. JUNCKER