COUNCIL IMPLEMENTING DECISION

of 22 April 2013

authorising the French Republic to apply differentiated levels of taxation to motor fuels in accordance with Article 19 of Directive 2003/96/EC

(2013/193/EU)

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) Council Implementing Decision 2011/38/EU [2] authorised the French Republic (hereinafter referred to as 'France') to apply, for a period of three years, differentiated levels of taxation to gas oil and unleaded petrol for the purposes of an administrative reform involving the decentralisation of certain specific powers previously exercised by central government. Implementing Decision 2011/38/EU expired on 31 December 2012.

(2) By letter dated 10 February 2012, France requested authorisation to continue to apply differentiated rates of taxation under the same conditions for a further period of six years after 31 December 2012.

(3) Implementing Decision 2011/38/EU was adopted on the basis that the measure requested by France met the requirements set out in Article 19 of Directive 2003/96/EC. 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 subsidiarity. It offers regions an additional incentive to improve the quality of their administration in a transparent fashion. In this respect, Implementing Decision 2011/38/EU requires that the reductions be linked to the socioeconomic circumstances of the regions in which they are applied. Consequently, a number of regions with either lower than average gross domestic product 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 differentiation of rates on a regional basis as well as the exclusion of gas oil used for commercial purposes from the measure imply that the risk of competitive distortions in the internal market is very low. Moreover, the application of the measure so far has shown a strong tendency on behalf of regions to levy the maximum rate allowable, which has further decreased any potential for competitive distortions.

(6) No obstacles to the 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.

(7) When originally requested, the national measure had been preceded by a tax increase equal to the margin for regional reductions. Against that background and in light of the conditions of the authorisation as well as experience gathered, the national measure does not appear to be in conflict with Union energy and climate change policies.

(8) It follows from Article 19(2) of Directive 2003/96/EC that each authorisation granted thereunder must be strictly limited in time. Moreover, the Commission proposal for a Council Directive amending Directive 2003/96/EC provides for a permanent rule allowing France, within certain limits, to apply differentiated levels of taxation at the level of the French regions. It is therefore appropriate to limit the period of application of this Decision to three years and to stipulate that, in any event, this Decision expires once the said permanent rule becomes applicable. Moreover, in order not to undermine future general developments of the existing legal framework, it is also important to provide that, should the Council 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 that modified system become applicable.

(9) It should be ensured that France can apply the specific reduction to which this Decision relates from 1 January 2013, following seamlessly on from the prior arrangements under Implementing Decision 2011/38/EU. The authorisation requested should therefore be granted with effect from 1 January 2013.

(10) This Decision is without prejudice to the application of the Union rules regarding State aid,

[1] OJ L 283, 31.10.2003, p. 51.
[2] OJ L 19, 22.1.2011, p. 13.

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. Gas oil for commercial use 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 35,4 per 1 000 litres of unleaded petrol or EUR 23,0 per 1 000 litres of gas oil;

(b) the reductions are no greater than the difference between the levels of taxation of gas oil for non-commercial use and gas oil for commercial use;

(c) the reductions are linked to the objective socioeconomic 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.

Article 2

This Decision shall take effect on the day of its notification.

It shall apply from 1 January 2013.

It shall expire on 31 December 2015.

However, this Decision shall expire on the earlier day one of the following modifications to Directive 2003/96/EC becomes applicable:

— the general system for the taxation of energy products is modified in a manner to which the present authorisation is not adapted,

— France is authorised to apply differentiated levels of taxation at the level of the regions.

Article 3

This Decision is addressed to the French Republic.

Done at Luxembourg, 22 April 2013.

For the Council
The President
E. GILMORE