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PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	30 January 2024
To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2024) 39 final
Subject:	Proposal for a COUNCIL IMPLEMENTING DECISION authorising Sweden to apply reduced excise duty rates on electricity consumed by households and service sector companies located in certain areas in the North of Sweden

Delegations will find attached document COM(2024) 39 final.

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2024/0015 (NLE)

Proposal for a

COUNCIL IMPLEMENTING DECISION

authorising Sweden to apply reduced excise duty rates on electricity consumed by households and service sector companies located in certain areas in the North of Sweden

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

Taxation of energy products and electricity in the Union is governed by Council Directive 2003/96/EC[1] (*hereinafter* 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 continue 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.

Council Implementing Decision (EU) 2017/2409 of 18 December 2017[2] currently 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 is compliant with the requirements of Directive 2003/96/EC, in particular with the minimum levels of taxation laid down in Article 10 of that Directive. This authorisation expires on 31 December 2023.

By letter dated 11 April 2023, the Swedish authorities 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 SEK 0.096/kWh), corresponding to approximately 8.8 EUR/MWh (or 0.0088 EUR/kWh)[3]. Sweden has requested for the reduction to be authorised for a period of four years, *i.e.* until 31 December 2027, which is within the maximum period indicated in Article 19(2) of the Directive.

Sweden provided additional information and clarifications on 10 October 2023.

Sweden mentioned that the scope of the present derogation request is identical to the previous request. The tax reduction would continue to apply to electrical power consumed for purposes other than (i) industrial activities, (ii) professional agricultural or forestry activities, (iii) professional aquaculture activities, (iv) shoreside electricity, or (v) in trains or other rail-bound means of transport or for engine operation or heating in immediate connection with such consumption. With the exception of the reduction for the consumption of shore-side electricity (which benefits from a reduction granted on the basis of Article 19 of the Directive), the electricity consumption for these activities benefit from other possibilities for reduction set out in the Swedish Energy Tax Act and are therefore not granted on the basis of Article 19 of the Directive.

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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 OJ L 342, 21.12.2017, p. 10.

3 Based on the SEK/EUR exchange rate of 3 October 2022 (SEK 10.8743 = EUR 1). See, to that effect, Art. 13(1) of Directive 2003/96/EC and OJ C 331, 3.10.2017, p. 3.

Sweden justified the measure by environmental as well as regional and cohesion policy objectives. Sweden underlined the fact that national excise duty rates on electricity considerably exceed the minimum levels of taxation as set out 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 requested measure would mitigate the 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.

As regards the nature of the disadvantage caused by the climatic differences, the Swedish authorities reiterated the statement made in their previous request that heating costs are on average 30% higher in the northern (electricity) regions[4], as the heating period in these areas[5] is longer.

Table A below shows the development of the applicable levels of the energy tax on electricity.

Table A – Levels of the energy tax on electricity (2018-2023)

Year	Normal level (öre/kWh)	Reduced level (öre/kWh)
2018	**33.1**	**23.5**
2019	**34.7**	**25.1**
2020	**35.3**	**25.7**
2021	**35.6**	**26.0**
2022	**36.0**	**26.4**
2023	**39.2**	**29.6**

To illustrate the impact of the tax reduction, the Swedish authorities explained that the tax reduction corresponds to 6% of the calculated annual total cost of electricity for an average small house with electric heating in northern Sweden. This represents an average annual saving of 210 EUR per household on an everage electricity bill of 3363 EUR. The reduction’s share of the total cost varies with the level of the retail electricity price. The Swedish authorities also mentioned that, since 2022 was a year with relatively high prices on average, the share of the tax reduction as a percentage of the total electricity cost during that year had been comparatively low.

The Swedish authorities also added that Sweden does not apply exemptions or reductions in the level of taxation to electricity within the meaning of Article 15(1)(h) of the Directive.

4 Sweden is subdivided into four price areas (from South to North): Malmö (SE4), Stockholm (SE3), Sundsvall (SE2) and Luleå (SE1).

5 Electricity regions SE1 and SE2.

The loss of tax revenue ensuing from the reduction of SEK 96 per MWh is estimated by Sweden to amount to SEK 760 million (approximately EUR 70 million) per year for the requested period 2024-2027.

(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.

Sweden stressed in this respect that even after the tax reduction, the minimum tax rates laid down in the Directive are complied with, since the tax burden is approximately 70 times higher than the minimum rates of taxation as regards business use (as set out in Annex I to the Directive), and approximately 35 times higher than the minimum taxation rates for non-business use according to the same Annex to the Directive.

(2) *Scope*

The excise duty on electricity was introduced in Sweden in 1951. Households and service sector companies normally pay the standard rate on electricity of SEK 392 per MWh (recalculated every year). The electricity consumed (i) in manufacturing industry and commercial agriculture, (ii) in professional agricultural, forestry or aquaculture activities, (iii) as shore-side electricity, or (iv) in trains or other rail-bound means of transport (or for engine operation or heating in immediate connection with such consumption), is taxed at a lower rate in compliance with the minimum rates set out in the Directive.

The Swedish authorities have stated that the geographic differentiation was introduced since 1 July 1981 on the basis of objective data relating to average temperatures during the heating period. On this basis, a reduced excise duty rate on electricity[6] 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). This measure is limited to households and service sector companies, for which a standard excise duty rate on electricity would apply (more than 10.000 beneficiaries).

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

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

The Swedish authorities consider that the measure would not 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.

6 Cf. Energy Tax Act (1994 :1776), Chapter 11, Sections 4, 9 and 17.

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

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 the standard rate of excise duty on the electricity consumed by households and service sector companies in certain areas in northern Sweden.

The Swedish authorities underline two objectives of this measure.

First, they indicate 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, it shoul de noted that environmental protection requirements as such are already an integral part of Directive 2003/96/EC[7] 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, the Swedish authorities consider 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, the requested authorisation can be considered, according to the latter, as based on specific policy considerations.

State aid rules

The temporary tax reduction envisaged by the Swedish authorities respects the minimum levels of taxation as laid down in Article 10 of the Directive.

The present proposal is without prejudice to any assessment of the Swedish measure under State aid rules. Moreover, the proposal for a Council implementing decision does not prejudge the Member State's obligation to ensure compliance with State aid rules.

- **Consistency with other Union policies**

Each request for derogation under Article 19 of the Energy Taxation Directive must be examined by the Commission taking into account the proper functioning of the internal market, the need to ensure fair competition and EU health, environment, energy and transport policies.

[7] Cf. in particular recitals (6) and (7).

The standard excise duty rate on electricity applicable to households and service sector companies in Sweden is SEK 392 per MWh[8]. With the proposed reduction, the applicable rate in certain areas in the North of Sweden is at least SEK 296 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 can be assumed that the tax reduction in question could 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 higher than in the rest of the country, mainly due to a longer heating period.

Sweden considers that the measure is compatible with the health, environment, energy and transport policies of the Union.

According to Sweden, under the circumstances described, the measure also appears not to hamper 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 by the Swedish authorities that it will lead to significant distortions of competition or changes in trade patterns between Member States.

Finally, Sweden 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.

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

The Commission suggests that the period of application (four years) complies with the period of time allowed by Directive 2003/96/EC. This period seems appropriate in order to provide the consumers concerned with a sufficient degree of certainty.

The requested measure also follows the Commission instructions stemming from the RePowerEU Communication[9] which underlines that, while focusing on vulnerable households and businesses, Member States are invited to adopt measures incentivising energy savings and reducing fossil fuels consumption. Given its duration as well as the geographical and climatical circumstances, the requested derogation seems adequate and proportionate. The measure also takes account of the need to balance the specific policy objectives listed in Article 19 of the Energy Taxation Directive, and notably the EU's environmental policy, with the need to ensure energy affordability for businesses and households located in the concerned areas of Sweden.

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8 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. Therefore, 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

9 Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions *REPowerEU: Joint European Action for more affordable, secure and sustainable energy*, (COM(2022) 108 final, 8.3.2022).

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

Article 19 of Council Directive 2003/96/EC.

• 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.

• Proportionality

The proposal respects the principle of proportionality.
The tax reduction does not exceed what is necessary to attain the objective in question.
The tax reduction is applicable during a limited four-year period.

• Choice of the instrument

The instrument proposed is a 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 introduced by Sweden and concerns only this Member State. Therefore, no stakeholder consultation has been conducted.

• 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 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.

- **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.

- **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

- **Implementation plans and monitoring, evaluation and reporting arrangements**

An implementation plan is not necessary. The proposal concerns an authorisation for a tax reduction for an individual Member State upon its own request. It is provided for a limited period of four years.

The applicable tax rates will be above the minimum levels of taxation set by the Energy Taxation Directive (Article 10).

The measure can be evaluated in case of a request for a renewal after the validity period has expired.

- **Explanatory documents (for directives)**

The proposal does not require explanatory documents on the transposition.

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

Article 1 stipulates that 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 cannot 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 stipulates that the authorisation requested is granted with effect from 1 January 2024 for a period of four years as requested by Sweden, within the maximum period of 6 years allowed by the Directive.

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

Having regard to the proposal from the European Commission,

Whereas:

(1) Council Implementing Decision (EU) 2017/2409[11] authorises Sweden to apply, until 31 December 2023, 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 11 April 2023, Sweden requested authorisation to continue to apply a reduced rate of excise duty to electricity consumed by the same beneficiaries for an additional period of 4 years, that is from 1 January 2024 until 31 December 2027. The reduction is to be limited to SEK 96 per MWh. By letter of 10 October 2023, Sweden sent additional information and clarifications.

(3) In the areas concerned, the costs of heating are on average 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.

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10 OJ L 283, 31.10.2003, p. 51.

11 Council Implementing Decision (EU) 2017/2409 of 18 December 2017 authorising Sweden to apply a reduced rate of excise duty 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 (OJ L 342, 21.12.2017, p. 10, ELI: http://data.europa.eu/eli/dec_impl/2017/2409/oj).

(5) In view of the remote nature of the areas to which it applies and given that the tax reduction is limited to households and service sector companies, without exceeding the additional costs of heating in the North of Sweden, the measure is not expected to lead to significant distortions of competition or changes in trade between Member States.

(6) Consequently, the measure is acceptable with regard to the proper functioning of the internal market and to the need to ensure fair competition. It is also compatible with the Union's health, environment, energy and transport policies.

(7) In accordance with Article 19(2) of Directive 2003/96/EC, each authorisation granted under that provision is to be 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 4 years, as requested.

(8) It is important to ensure that the authorisation granted under Decision (EU) 2017/2409 continues to apply in order to avoid creating a vacuum between the expiry of that Decision and the date of application of this Decision.

(9) In order not to undermine future general developments of the existing legal framework, it is appropriate to provide that, should the Council, acting on the basis of Article 113, or any other relevant provision of the Treaty on the Functioning of the European Union, introduce, during the period of authorisation set out in this Decision, a modified general system for the taxation of energy products and electricity to which this authorisation would not be adapted, the authorisation should cease to apply on the day on which those general rules become applicable.

(10) 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 2024 until 31 December 2027.

Article 3

This Decision is addressed to the Kingdom of Sweden.

Done at Brussels,

For the Council
The President