COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 23.12.2002
COM(2002) 764 final

Proposal for a

COUNCIL DECISION

authorising Sweden to differentiate excise duty rates on carbon dioxide neutral fuels in accordance with Article 8(4) of Directive 92/81/EEC

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. SUBMISSION OF REQUEST

1.1. By letter dated 8 July 2002, the Swedish authorities informed the Commission about their wish to introduce a derogation allowing them to apply an excise duty rate differentiation on carbon dioxide neutral fuels (CO_2-neutral fuels) in accordance with Article 8(4) of Directive 92/81/EEC[1].

In order to obtain the information required to evaluate the request, the Commission requested additional information by letter dated 8 August 2002 to which the Swedish authorities replied on 20 September 2002. The reply of the Swedish authorities enabled the Commission to finalise its evaluation of the application for a derogation.

1.2. The Swedish excise duty on mineral oils is composed of two elements, namely an energy tax and a carbon dioxide (CO_2) tax.

Sweden currently applies different excise duty rates on both petrol and diesel according to environmental standards. For environmental category 1[2], the energy tax applicable is SEK 3.16 (€ 0.32[3]) per litre for petrol and SEK 1.32 (€ 0.14) per litre for diesel. Additionally, the CO_2 tax share remains unchanged under the different environmental classes, and amounts to SEK 1.46 (€ 0.16) for petrol and SEK 1.80 (€ 0.20) for diesel.

Sweden proposes to amend its legislation on excise duty on mineral oil products (Energy Tax Act 1994:1776) by lowering, or reducing to zero the CO_2-tax charged on petrol or diesel oil, to the extent to which CO_2-neutral fuels in mixed or pure form, replace petrol or diesel oil used as motor fuel.

This measure is designed to contribute to environmental improvements, mainly to reduce the CO_2 emissions. Other effects of replacing mineral oil products, by increasing the use of the CO_2-neutral fuels produced from renewable energy sources, are: the reduction of the EU dependence upon third countries, enforcement of the EU's own sustainable energy supply, and, a contribution to agriculture policy.

Moreover, Sweden intends to promote the development of biofuels through pilot projects. Under Article 8(2) of Council Directive 92/81/EEC, Sweden may apply total or partial exemptions or reductions, under fiscal control, in the field of pilot projects for the technological development of more environmentally friendly products, in particular, in relation to fuels from renewable resources.

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1 Directive published in OJ L 316, 31.10.1992, p. 12, as last amended by Directive 94/74/EC (OJ L 365, 31.12.1994, p. 46).

2 According to the Swedish authorities, the class 1 fuel, for which the lowest rate is applicable, accounted for nearly 100% of fuels sold in 2001 for both petrol and diesel.

3 The exchange rate is rounded off to 9.73 SEK for one euro.

The measure is scheduled with effect from 1 January 2003, or a later date determined by the Government when approval has been obtained from the EU. It will end on 31 December 2007.

The duty forgone as a result of the excise duty reduction is estimated to be some 750 million SEK (€ 77 million) per annum.

1.3. Production costs of CO_2-neutral fuels exceed those of conventional petrol or diesel oil to a far higher extent than the foreseen CO_2-tax reduction. Without the duty reduction, its retail price would therefore not be competitive. The duty reduction is intended to offset a part of the additional production costs. By removing this disparity, it will enable CO_2-neutral fuels to be sold at a more competitive price in comparison to conventional petrol or diesel.

1.4. The requested CO_2 tax reduction is foreseen for CO_2-neutral fuels.

Based on the biological origin of the carbon atoms they contain, the following products are considered as CO_2-neutral fuels:

- Animal and vegetable fats and their derivatives, falling within CN codes 1501 to 1518;

- Alcohols, falling within CN codes 2207 20 00 and 2905 11 00, which are denatured and not of synthetic origin, and similar products;

- Other products produced from biomass.

The CO_2-tax reduction will be proportional to the biological origin of the carbon atoms of the fuel.

1.5. Provided that the fuel concerned meets the above mentioned criteria, the duty reduction will be granted to any producer in the Member States, or third countries, whose product is put on the market in Sweden. The CO_2 tax reduction is granted automatically, without entailing a system of application and reimbursement.

2. EVALUATION BY THE COMMISSION

2.1. Under Article 8(4) of Council Directive 92/81/EEC, the Council, acting unanimously on a proposal from the Commission, may authorise any Member State to introduce further exemptions or reductions of excise duties for specific policy considerations.

The Swedish authorities have informed the Commission about their wish to introduce a derogation allowing them to differentiate excise duty rates on CO_2-neutral fuels, in accordance with Article 8(4) of Directive 92/81/EEC[4].

As required by Directive 92/81/EEC, the other Member States have been informed of Sweden's request.

4 Directive published in OJ L 316, 31.10.1992, p. 12, as last amended by Directive 94/74/EC (OJ L 365, 31.12.1994, p. 46).

2.2. Exemptions requested under Article 8(4) of Directive 92/81/EEC must be examined in terms of their compliance with Community policies.

For several years the EU has followed a policy of CO_2 emission reduction, one milestone of this was the recent signature of the Kyoto protocol by the European Union[5].

The Communication from the Commission to the Council, the European Parliament and the Economic and Social Committee on Tax policy in the European Union – Priorities for the years ahead[6], as well as the 6th Environmental Action Programme[7], present fiscal measures as one of the instruments for better incorporation of environmental aspects into Community policy areas.

The tax reduction requested by the Swedish authorities is therefore in line with the:

– Community's environmental policy of CO_2 emission reduction, and

– Community’s energy policy to ensure its own sustainable energy supply.

The Commission notes that the effective total excise duty rates (see following table) for fuels produced from 100 % CO_2-neutral origin are, in the case of a petrol equivalent biofuel, higher than the applicable Community minimum rate. For pure biodiesel, the tax level may go below the relevant Community minimum rate, down to 140 € / 1000 litres. However, the political compromise reached on the proposed Council Directive amending Directive 92/81/EEC concerning biofuels[8], allows a total exemption from mineral oil excise duties under certain conditions. These conditions are met in the present case.

Fuel category	Community minimum (per 1000 l)[9]	Energy tax (per 1000 l)	CO_2-tax (per 1000 l)	Minimum level of taxation for the equivalent biofuel (per 1000 l)
Unleaded petrol	287 €	320 €[10] SEK 3160	0 € SEK 0	320 € SEK 3160
Gas oil (Diesel)	245 €	140 € SEK 1320	0 € SEK 0	140 € SEK 1320

5 Council decision of 25 April 2002 concerning the approval, on behalf of the European Community, of the Kyoto Protocol to the UN Framework Convention on climate Change and the joint fulfilment of commitments thereunder (OJ L 130/1 of 15.5.2002).

6 COM(2001) 260 final.

7 COM (2001) 547 final.

8 Proposal for a Council Directive amending Directive 92/81/EEC with regard to the possibility of applying a reduced rate of excise duty on certain mineral oils containing biofuels and on biofuels, COM(2001) 547 final, OJ C 103 E, 30.04.2002, p. 217– 220.

9 In accordance with Directive 92/82/EEC, OJ L 316, 31.10.1992, p. 19, as last amended by Directive 94/74/EC (OJ L 365, 31.12.1994, p. 46).

10 The exchange rate is rounded off to SEK 9.73 for one euro.

The Swedish government will keep control of prices so that there will be no overcompensation in favour of CO_2-neutral fuels in comparison with equivalent fossil fuels.

As regards the State aid rules, a decision on the compatibility of the proposal will be adopted by the Commission as soon as the Council has authorised Sweden to introduce this measure.

3. DECISION

The Commission proposes that, under Article 8(4) of Council Directive 92/81/EEC, the Council authorises Sweden to apply until 31 December 2007 differentiated excise duty rates on CO_2-neutral fuels in accordance with Article 8(4) of Directive 92/81/EEC.

The effective excise duty rate applicable to CO_2-neutral fuels substituting unleaded petrol shall not be lower than EUR 320 per 1000 litres.

The effective excise duty rate applicable to CO_2-neutral fuels substituting diesel shall not be lower than EUR 140 per 1000 litres.

Based on a regular review by the Swedish authorities, the reduction in excise duty shall be adjusted to avoid over-compensating for the extra costs involved in the manufacturing of CO_2-neutral fuels.

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authorising Sweden to differentiate excise duty rates on carbon dioxide neutral fuels in accordance with Article 8(4) of Directive 92/81/EEC

(Only the Swedish text is authentic)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 92/81/EEC of 19 October 1992 on the harmonisation of the structures of excise duties on mineral oils[11], and in particular Article 8(4) thereof,

Having regard to the proposal from the Commission,

Whereas:

(1) In accordance with Article 8(4) of Directive 92/81/EEC Sweden has requested authorisation to apply a differentiated rate of CO_2-tax to carbon dioxide neutral fuels (CO_2-neutral fuels).The other Member States have been duly notified.

(2) The development of renewable energies, and biofuels in particular, has been encouraged in the Community since 1985. On 7 November 2001[12], the Commission adopted an action plan, and two proposals for directives on encouraging the use of substitute fuels in the transport sector, starting with regulatory and tax measures designed to promote biofuels. The derogation requested by the Swedish authorities is therefore in line with the Community's policy of developing the biofuel sector, in the interests of protecting the environment, and ensuring security of energy supply.

(3) In Sweden, the total excise duty on mineral oil products is composed of two elements, the energy tax and the CO_2-tax. According to the Swedish authorities the CO_2-tax rate could be reduced to zero to the extent that CO_2-neutral fuels in mixed or pure form replace conventional mineral oil products in petrol or diesel. The CO_2-tax reduction should be proportional to the biological origin of the carbon atoms of the fuel.

(4) Based on the biological origin of the carbon atoms they contain, the following products are considered as CO_2-neutral fuels:

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[11] OJ L 316, 31.10.1992, p. 12. Directive as last amended by Directive 94/74/EC (OJ L 365, 31.12.1994, p. 46).

[12] COM(2001) 547 final, 7.11.2001

– Animal and vegetable fats and their derivatives, falling within CN codes 1501 to 1518;

– Alcohols, falling within CN codes 2207 20 00 and 2905 11 00, which are denatured and not of synthetic origin, and similar products;

– Other products produced from bio-mass.

(5) The differentiated rate should apply to CO_2-neutral fuels at the point of production or import. The CO_2 tax exemption should be granted automatically, without entailing a system of application and reimbursement

(6) The provisions of this Decision shall be without prejudice to the application of Article 27(1)(a) and (b) of Council Directive 92/83/EEC of 19 October 1992 on the harmonisation of the structures of excise duties on alcohol and alcoholic beverages[13], as regards the compulsory exemption of denatured alcohol and the arrangements for its distribution, in view of the fact that the present tax arrangements should be applied solely to the specific case of denatured alcohol used as a fuel or fuel additive in accordance with Article 2(3) of Directive 92/81/EEC.

(7) Production costs of CO_2-neutral fuels exceed those of conventional fuel, and its retail price would therefore not be competitive without the CO_2-tax reduction. The excise duty reduction is intended to partly offset the additional production costs of CO_2-neutral fuels in comparison with fossil fuels. In order to avoid overcompensation the Swedish government should therefore regularly review the production costs of CO_2-neutral fuels.

(8) The accorded authorisation should apply for a period of five years.

(9) 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 competition, protection of the environment, health protection, energy, and transport.

HAS ADOPTED THIS DECISION:

Article 1

Sweden is hereby authorised to apply a differentiated rate of carbon dioxide tax (CO_2 tax) on carbon dioxide neutral fuels (CO_2-neutral fuels).

Article 2

Based on the biological origin of the carbon atoms they contain, the following products shall be considered as CO_2-neutral fuels:

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13 OJ L 316, 31.10.1992, p. 21.

(a) Animal and vegetable fats and their derivatives, falling within CN codes 1501 to 1518;

(b) Alcohols, falling within CN codes 2207 20 00 and 2905 11 00, which are denatured and not of synthetic origin, and similar products;

(c) Other products produced from biomass.

"Biomass" shall mean the biodegradable fraction of products, waste and residues from agriculture (including vegetal and animal substances), forestry and related industries, as well as the biodegradable fraction of industrial and municipal waste.

Article 3

The CO_2-tax reduction shall be proportional to the biological origin of the carbon atoms of the fuel.

Article 4

The effective excise duty rate applicable to CO_2-neutral fuels substituting unleaded petrol shall not be lower than EUR 320 per 1000 litres.

The effective excise duty rate applicable to CO_2-neutral fuels substituting diesel shall not be lower than EUR 140 per 1000 litres.

Article 5

Based on a regular review by the Swedish authorities, the reduction in excise duty shall be adjusted to take account of changes in the price of raw materials to avoid over-compensating for the extra costs involved in the manufacturing of CO_2-neutral fuels.

Article 6

This Decision shall expire on 31 December 2007.

Article 7

This Decision is addressed to the Kingdom of Sweden.

Done at Brussels,

For the Council
The President