



EUROPEAN COMMISSION

Brussels, 07-05-2004

C (2004)1614fin

**Subject: State aid N2/04 (UK); Aggregates Levy – Northern Ireland exemption**

Sir,

#### **PROCEDURE**

1. The United Kingdom notified the measure on 5 January 2004. The Commission asked for additional information by letter dated 12 February 2004. The United Kingdom submitted information on 11 March 2004 and 2 April 2004.

#### **DESCRIPTION**

##### *The Aggregates Levy*

2. The Aggregates levy (“AGL”) is applied to rock, sand or gravel on its first extraction, when used for the manufacture of products containing a proportion of aggregate (processed products). It was introduced by the United Kingdom with effect from 1 April 2002 for environmental purposes: to maximise the use of recycled aggregate and other alternatives to virgin aggregate; and to promote the efficient extraction and use of virgin aggregate, which is a non-renewable natural resource. The environmental costs of aggregate extraction being addressed through the levy include noise, dust, damage to biodiversity and visual amenity.
3. The AGL is applied to virgin aggregate extracted in the United Kingdom and to imported virgin aggregate on its first use or sale in the United Kingdom at a rate of GBP1.60 (approximately EUR 2.40) per tonne. It does not apply to virgin aggregate exported from the United Kingdom, nor to products containing aggregates imported into the United Kingdom.

##### *The existing exemption for Northern Ireland*

4. In its decision of 24 April 2002 (N 863/01)<sup>1</sup>, the Commission considered that the phased introduction of the AGL in Northern Ireland is compatible with Section E.3.2

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<sup>1</sup> OJ C 133, 05.06.2002, p.11

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of the Community Guidelines on State aid for environmental protection<sup>2</sup> (“the Guidelines). It was considered that the AGL would place the industry in Northern Ireland at a risk of loss of international competitiveness, in particular against aggregates producers in the Republic of Ireland. The approved aid takes the form of a 5 year degressive scheme of tax relief, to start in 2002 and to end in 2007.

*The proposed, modified exemption for Northern Ireland*

5. The UK authorities explained that, since the introduction of the scheme in 2002, the levy has put firms in the Northern Ireland aggregates industry in a more difficult competitive position than initially anticipated. After the gradual introduction of the levy in Northern Ireland, there has been an increase in illegal quarrying, and an increase in undeclared imports of aggregate into Northern Ireland from the Republic of Ireland, without aggregates levy being paid in either case. Consequently, the legitimate quarries paying the levy are being undercut by illegal sources operating outside the levy and therefore losing sales to these illegal sources. The findings in a report commissioned by the UK authorities from the Symonds’ Group (specialist consultants in the quarrying/construction sectors) and other evidence available to the UK Customs and Excise authorities, who are responsible for enforcing the levy, confirm this development.
6. According to the UK, the Quarry Products Association Northern Ireland indicated over thirty-eight quarries they considered to be operating illegally. Customs investigated each site and a number of others it suspected of operating illegally. Five new registrations have been secured and outstanding liabilities are being pursued. A further nine are still being pursued and another nine are still being traced. There is also evidence, as set out in the Symonds’ Report, of a significant volume of unrecorded imports of aggregate from the Republic of Ireland, on which levy is being evaded.
7. In addition, the United Kingdom explained that, while the AGL is having an appreciable positive environmental effect in Great Britain, it has not been working as intended in Northern Ireland, where the availability of levy-free recycled and alternative materials is very limited and localised, and the infrastructure of collecting and processing such materials is almost non-existent. According to the UK authorities, this means, that the existing relief scheme will not give processed products manufacturers in Northern Ireland sufficient time to adapt to the introduction of the levy by switching to alternative or recycled materials.
8. In order to more effectively achieve the intended environmental objectives, the UK government intends to make the relief conditional upon claimants formally entering into and complying with negotiated agreements with the UK government, committing the claimants to a programme of environmental performance improvements over the duration of the relief. The Department of Environment in Northern Ireland will be responsible for monitoring these agreements, and the relief will be withdrawn for those firms which have significant shortcomings.
9. In order to provide additional time for the processed products industry (i.e. the businesses that commercially exploit virgin aggregate) to adapt and to achieve the intended environmental effects, it is intended to replace the existing scheme by a new relief scheme. The relief applies to all types of aggregate, is set at the level of 80

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<sup>2</sup> OJ C 37, 3.2.2001, p.3

per cent of the level otherwise payable, and will be a transitional arrangement. It will come into effect on 1 April 2004 and continue until 31 March 2011 (i.e. 9 years from the start of the levy on 1 April 2002). The estimated additional revenue cost, compared with the existing relief, amounts to GBP 225 million (around EUR 337 million).

## **ASSESSMENT**

### ***Existence of aid***

10. According to Article 87(1) of the EC Treaty, any aid granted by a Member State or through state resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the common market. Pursuant to the established case law of the European Courts, the criterion of trade being affected is met if the recipient firm carries out an economic activity involving trade between Member States.
11. The Commission notes that the notified exemption from the AGL is to be granted through State resources, in the form of tax relief, to companies situated in Northern Ireland, favouring them by reducing the costs that they would normally have to bear. The recipients of the aid are involved in the extraction of aggregates or the manufacture of processed products, which are economic activities involving trade between Member States. Therefore, the aid in question falls within the scope of Article 87(1) of the EC Treaty.

### ***Compatibility of the aid***

12. The AGL is a measure intended to protect the environment. According to the Guidelines, the concept of environmental protection means any action designed to remedy or prevent damage to our physical surroundings or natural resources, or to encourage the efficient use of these resources. Accordingly, the notified aid measure falls to be assessed under the Guidelines.
13. Section E.3.2 of the Guidelines concern rules applicable to all operating aid in the form of tax reductions or exemptions. Point 51(2) provides that:

*“The provisions in point 51.1 may be applied to existing taxes if the following two conditions are satisfied at the same time:*

*(a) the tax in question must have an appreciable positive impact in terms of environmental protection;*

*(b) the derogations for the firms concerned must have been decided on when the tax was adopted or must have become necessary as a result of a significant change in economic conditions that placed the firms in a particularly difficult competitive situation. In the latter instance, the amount of the reduction may not exceed the increase in costs resulting from the change in economic conditions. Once there is no longer any increase in costs, the reduction must no longer apply.”*

14. The Commission has noted the following points:
  - As the AGL has already been implemented throughout the UK (including Northern Ireland) since April 2002, it must be treated as an existing tax.

- The tax is levied on activities for reasons of environmental protection. Its aim is to protect the environment by contributing to reductions of the extraction of virgin aggregates and encouraging the use of alternative materials. The British Aggregates Association (BAA), other associations of producers and individual undertakings contest that the AGL has an appreciable positive impact in terms of environmental protection. However, empirical information provided by the UK authorities on the effects of the levy since its introduction indicates that, while the AGL has not been working as intended in Northern Ireland, it is in fact having an appreciable positive environmental effect in Great Britain. In this context, the United Kingdom authorities stated that the amount of virgin material extracted in Great Britain fell significantly in 2002 (-5.7% compared to the average of the five previous years); the cost of aggregates subject to the levy is significantly higher than the cost of aggregates that are not subject to the levy, which indicates that the environmental costs of the supply of aggregates are being passed on to consumers (internalising the negative environmental externalities of the quarrying of aggregate into the cost of aggregate); sales of recycled and alternative material (e.g. slate waste and china clay) have increased and new recycling facilities have been opened.
- The Commission notes that the fundamental decision to exempt certain firms in Northern Ireland from the AGL was already taken when the tax was introduced on 1 April 2002.

The conditions of point 51(2) are therefore fulfilled.

15. By virtue of point 51(1)(b), second indent, tax exemption decisions covering a 10-year period with no degressivity may be justified where the reduction concerns a domestic tax imposed in the absence of a Community tax and the firms eligible for the reduction must nevertheless pay a significant proportion of the national tax.
16. The Commission has noted the following points:
  - As regards the duration of the scheme, the fact has been taken into account that Northern Ireland has already benefited from relief granted under the existing scheme for nearly 2 years. Therefore, the duration is limited to 7 years (from 1 April 2004 to 31 March 2011).
  - In the present case, the reduction concerns a domestic tax imposed in the absence of a Community tax. In this case, the guidelines require that firms eligible for the reduction must nevertheless pay a significant proportion of the national tax. In the present case, the UK proposed to maintain the tax at the level of 20 per cent of the full rate, which the Commission considers significant<sup>3</sup>. The fact that the full exemption was applied during the first year after the introduction of the AGL is compensated by the fact that the duration of the exemption is limited to a period of 7 years.
17. For these reasons, the conditions set out in the environmental guidelines are fully met. Therefore the tax exemption scheme must be considered compatible with the common market in accordance with Article 87(3)(c) of the EC Treaty.

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<sup>3</sup> See for instance Commission decision on case N449/01 (Germany) – Continuation of the ecological tax reform (OJ C137, 8.6.2002, p.34).

## DECISION

18. The Commission has accordingly decided that the modified exemption to the AGL in Northern Ireland, as notified by the United Kingdom authorities, is compatible with the EC Treaty.
19. If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site: [http://europa.eu.int/comm/secretariat\\_general/sgb/state\\_aids/](http://europa.eu.int/comm/secretariat_general/sgb/state_aids/). Your request should be sent by registered letter or fax to:

European Commission  
Directorate-General for Competition  
State Aids Registry  
B-1049 Brussels  
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Yours faithfully,  
For the Commission

Mario Monti  
Member of the Commission