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Proposal for a

COUNCIL IMPLEMENTING DECISION

authorising Italy to apply a reduced rate of taxation to electricity directly supplied to vessels, other than private pleasure craft, at berth in a port [in accordance with Article 19 of Directive 2003/96/EC]

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 of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity[1] (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.

Italy asked to be authorised to apply a reduced rate for the supply of shore-side electricity to vessels at berth in a port equipped with electrical installations with a rated installed capacity of more than 35 kW, for a period of six years. The objective of this proposal is to grant that authorisation by means of a derogation valid, as requested, for six years from 18 October.

By letter dated 14 September 2020, the Italian authorities informed the Commission of their intention to apply the measure. Additional information was provided on 12 May 2021.

Italy is seeking for an authorisation to apply a reduced tax rate of EUR 0.50/MWh, equal to the minimum rate of taxation for electricity for business use as laid down in the Directive, to shore-side supply of electricity to vessels at berth in a port equipped with electrical installations with a rated installed capacity of more than 35 kW.

The requested period of validity is six years, which is within the maximum period allowed by Article 19 of the Energy Taxation Directive.

With the requested measure Italy wants to give an incentive for the use of shore-side electricity which is considered a less polluting alternative to the generation of electricity on board vessels lying at berth in a port. As indicated in the request, the reduced rate for the beneficiaries will be EUR 0.50/MWh. That is the minimum rate for electricity as specified in Article 10(1) and Table C of Annex I to the Directive). Due to the degressive structure of the energy tax, the relative advantage will be higher for operators (and users) of installations with a relative low consumption.

On the other hand, according to Article 14(1)(c) of the Energy Taxation Directive, Member States have to exempt energy products used to produce electricity -and electricity produced- on board ships at berth in ports. The exemption may also apply in the case of energy products used to produce electricity -and electricity produced- on board ships for navigation on inland waterways according to Article 15(1)(f) of the Directive. Italy confirmed the transposition of this latter optional exemption.

As indicated in the request, the electrification of port quays is currently not widespread in Italy and, therefore, the implementation of the tax reduction should not have financial effects in the short term. The Italian authorities could not make an estimation of the number of beneficiaries of the measure ex ante and, therefore, could not provide the annual budgetary expenditure.

[1] OJ L 283, 31.10.2003, p. 51–70.

The Italian authorities have indicated that the tax reduction applies to all vessels at berth in a port equipped with electrical installations with a rated installed capacity of more than 35 kW other than private pleasure craft, meaning that all ships involved in commercial navigation, regardless of size or flag, can benefit from the tax reduction.

The reason why the scope of the measure at issue has been restricted to vessels that are fitted with electrical systems with a rated installed capacity of more than 35 kilowatts is closely linked to the environmental objective pursued. The Italian authorities assume that vessels with electrical systems of low rated capacity, whilst in ports, would usually resort to electricity directly provided by ground installations to vessels at berth in a port ("shore-side electricity") and not to stand-alone electrical generators through their own internal combustion engines. Therefore, vessels with a rated capacity of less than 35 kW lying at berth in ports do not contribute to the pollution. The rationale for addressing the tax measure in question to vessels with larger electrical systems that normally keep their own fossil fuel-powered electrical generators in operation is indeed to encourage them to use, during their berth, the electricity supplied by shore-side installations.

The measure is not available to businesses in financial difficulties, or businesses which are subject to recovery orders on the basis of an earlier Commission decision declaring an aid measure to be unlawful and incompatible with the internal market.

With the tax reduction, Italy wants to provide an incentive for relevant operators to develop and use shore-side electricity in order to reduce air pollution from the combustion of fuels by vessels at berth as well as CO2 emissions. The application of a reduced tax rate would strengthen the competitiveness of shore-side electricity relative to the burning of bunker fuels on board, which is tax exempt.

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

Taxation of electricity is governed by the Energy Taxation Directive 2003/96/EC, in particular Article 10. Article 14(1)(c) provides for an obligatory tax exemption for energy products for navigation as well as for electricity produced on board a craft. Articles 5, 15 and 17 provide for the possibility for Member States to apply tax differentiations, including exemptions and reductions, to certain uses of electricity. However, as such, these provisions do not provide for reduced taxation of shore-side electricity.

Provisions under the Energy Taxation Directive

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.

By means of the tax reduction in question, the Italian authorities pursue the objective to promote an environmentally less harmful way for ships to satisfy their electricity needs while lying at berth in ports and hence to improve local air quality and reduce noise. The Commission has already recommended the use of shore-side electricity as an alternative to the generation of electricity on board the vessels at berth and thereby recognised its

environmental advantages[2]. Beneficiaries would be charged the EU minimum tax rate for electricity under the Energy Taxation Directive of EUR 0.50/MWh, which can contribute to the stated policy objectives.

The possibility to introduce a favourable tax treatment to shore-side electricity can be envisaged under Article 19 of the Directive since its purpose is to allow Member States to introduce further exemption or reductions for specific policy considerations.

Italy has requested that the measure should apply for the maximum period allowed by Article 19(2) of the Directive (i.e. 6 years). In principle, the period of application of the derogation should be long enough in order not to discourage port operators and electricity suppliers from starting -or continuing- to make the necessary investments in shore-side electricity facilities. That period will provide the maximum possible legal certainty also to ship operators, which have to plan their investments in on-board equipment.

However, the derogation should not undermine future developments of the existing legal framework and should take into account the revision of the Energy Taxation Directive and a possible adoption by the Council of a legal act based on the Commission proposal for amendment of the Energy Taxation Directive published on 14 July 2021[3].

Under these circumstances, while it appears appropriate to grant the authorisation for the requested period, the duration of validity of the derogation might be shorter than that requested should the entry into application of general provisions on the matter happen earlier.

State aid rules

The reduced tax rate of EUR 0.50 per MWh envisaged by the Italian authorities is equal to the EU minimum level of taxation for electricity for business use pursuant to Article 10 of Directive 2003/96/EC.

The measure thus seems to fall under Article 44 of Commission Regulation 651/2014/EU (GEBR), which stipulates the conditions under which aid in the form of reductions in environmental taxes under Directive 2003/96/EC can be exempted from the State aid notification requirements. However it cannot be established at this stage whether all the conditions set in this Regulation are fulfilled and the proposal for a Council implementing decision does not prejudge the Member State's obligation to ensure compliance with State aid rules, in particular, in case of exempted aid, falling under Commission Regulation 651/2014/EU[4].

- **Consistency with other Union policies**

Environment and climate change policy

The requested measure concerns mainly the EU's environment and climate change policy. To the extent that it will help reduce the burning of bunker fuels on board the vessels in ports, the measure will contribute to the objective of improving local air quality. In its Article 13,

[2] Commission Recommendation 2006/339/EC of 8 May 2006 on the promotion of shore-side electricity for use by ships at berth in Community ports (OJ L 125, 12.5.2006).

[3] Proposal for a council directive restructuring the Union framework for the taxation of energy products and electricity (recast), 14.7.2021, COM(2021)563 final 2021/0213 (CNS)

[4] Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (OJ L 187, 26.6.2014, p. 1).

Directive 2008/50/EC on Ambient Air Quality[5] requires Member States to ensure that the levels of several air pollutants are kept below the limit values, target values and other air quality standard established in the Directive are respected. Those obligations require Member States to find solutions to problems, such as ship emissions at berth in ports, where this is relevant and it is conceivable that in ports where those problems exist, the use of shore-side electricity is encouraged as one element of the overall air quality strategy. The use of shore-side electricity is also encouraged under Directive (EU) 2016/802[6] regulating the sulphur content in marine fuels. That would also contribute to comply with nitrogen deposition requirements pursuant to Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora. In that regard, the Italian authorities expect local emissions to be reduced by the use of shore side electricity.

The measure would encourage the use of shore-side electricity to contribute to sustainable ports and sustainable shipping. It is in line with the EU policy ambitions. Deploying shore-side electricity in European ports is one of the proposed measures to achieve the ambitions targets set in the European Green Deal.

The measure is also likely to lead to a reduction of CO2 emissions to the extent that the electricity mix from the onshore grid, due to higher system efficiency and the difference in input fuels used, is less carbon intensive than the electricity produced on board by burning bunker fuels.

Energy policy

The measure is in line with Directive 2014/94/EU on the deployment of alternative fuels infrastructure[7], which addresses the issue of installing shore-side electricity supply facilities in ports where there is demand for such facilities and the costs are not disproportionate to the benefits, including environmental benefits. It has also been recognised as an objective of common interest for the granting of State aid under Article 107(1) of TFEU[8].

It has to be recalled at this point that one important reason for the unfavourable competitive position of shore-side electricity lies in the fact that the alternative, i.e. electricity produced on board the vessels while in maritime ports, currently enjoys a full net tax exemption. Not only is the bunker fuel burnt for generating the electricity exempt from taxation, which corresponds to the normal situation under Article 14(1)(a) of Directive 2003/96/EC, but also the electricity produced on board the vessels is itself exempt (cf. Article 14(1)(c) of Directive 2003/96/EC). Although the latter exemption could as such be considered difficult to reconcile with the environmental objectives of the Union, it mirrors considerations of practicability. In fact, taxation of the electricity produced on board would require a declaration by the ship owner -often established in a third country- or operator of the amount of electricity consumed. The declaration would furthermore have to determine the share of the electricity consumed in the territorial waters of the Member State where the tax is due. It would create a huge administrative burden for ship-owners to make such declarations for every Member States whose territorial waters are concerned. Analogous considerations apply to inland navigation

5 Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe (OJ L 152, 11.6.2008, p 1).

6 Directive (EU) 2016/802 of the European Parliament and of the Council of 11 May 2016 relating to a reduction in the sulphur content of certain liquid fuels (OJ L 132, 21.5.2016, p. 58).

7 Directive 2014/94/EU of the European Parliament and of the Council of 22 October 2014 on the deployment of alternative fuels infrastructure (OJ L 307, 28.10.2014, pp. 1)

8 C(2014) 2231 final of 9 April 2014.

and the optional tax treatment provided by Article 15(1)(f) of the Directive (actually implemented by Italy). Under these circumstances, it can be justified not to penalize the less-polluting alternative of shore-side electricity by allowing Italy to apply a reduced rate of taxation.

Transport policy

The measure is in line with Commission recommendation 2006/339/EC on the promotion of shore-side electricity for use by ships at berth in Union ports[9] and with the Commission Communication Strategic goals and recommendations for the EU's maritime transport policy[10].

Internal market and fair competition

From the point of view of the internal market and fair competition the measure only reduces the existing tax distortion between two competing sources of electricity for boats at berth, i.e. on board generation and shore-side electricity, caused by the tax exemption for bunker fuels.

As regards competition between vessel operators, it first has to be mentioned that according to the Italian authorities there are currently no vessels at berth in a port equipped with electrical installations with a rated installed capacity of more than 35 kW, which use shore-side electricity. Significant distortions in competition could therefore only arise between vessels benefitting from the measure requested by changing to shore-side electricity and others that would continue to use on-board generation. Although precise cost projections depend crucially on the development of the oil price and are therefore very difficult, the latest available assessments indicate that overall even a full tax exemption would in most cases not reduce operational costs of shore-side electricity below the costs of on-board generation[11] and would therefore not, in any event, represent a significant competitive benefit for vessel operators using shore-side electricity as opposed to those using on-board generation. In the present case, a significant distortion of the above mentioned kind can all the less be expected since Italy will respect the minimum level of taxation prescribed by Directive 2003/96/EC for electricity for business use.

Moreover, as already mentioned, the ship operators, receiving shore-side electricity taxed at the minimum level provided for in Directive 2003/96/EC, do not in principle gain an economic advantage over operators generating their own electricity on board because this electricity is exempted from taxation. According to the Italian authorities substitution of own generation on board by shore-side electricity taxed at the applicable minimum level would not lead to an overall significant cost advantage[12].

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9 Commission Recommendation 2006/339/EC of 8 May 2006 on the promotion of shore-side electricity for use by ships at berth in Community ports (OJ L 125, 12.5.2006)

10 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – Strategic goals and recommendations for the EU's maritime transport policy until 2018, COM(2009) 8 final of 21 January 2009.

11 Cf. European Commission Directorate General Environment, Service Contract Ship Emissions: Assignment, Abatement and Market-based Instruments, Task 2a – Shore-Side Electricity, August 2005, http://ec.europa.eu/environment/air/pdf/task2_shoreside.pdf . The cost analysis is carried out for the three ports of Gothenburg (Sweden), Juneau and Long Beach (USA)

12 The Italian Authorities providing the example of a medium-sized vessel equipped with electrical systems with a total rated installed capacity of 200 kW: The economic advantage deriving from the application of the envisaged rate of excise duty of EUR 0.5 per MWh would amount - considering the

Furthermore, access to shore-side electricity will be available for the ships concerned regardless of their flag without leading to a more advantageous tax treatment of national economic operators over their competitors from other EU Member States.

Concerning competition between ports, it can be expected that any potential impact on trade between Member States, which could result if vessels alter their routes because of the possibility to consume shore-side electricity at a reduced tax rate, will be negligible. In a situation where, as stated above, the use of shore-side electricity is, at least in the short term, unlikely to become more economic than on-board generation in spite of the tax reduction, this tax reduction for shore-side electricity is also unlikely to significantly distort competition between ports by inducing vessels to change their itinerary according to the availability of this option.

The restriction to apply the reduced rate of taxation to supplies of shore-side electricity of at least 380 Volt to vessels could be regarded as a distortion of the market. However, the Italian authorities have indicated there is no supply of shore-side electricity of less than 380 Volt to commercial vessels, electricity of this voltage is only supplied to small pleasure crafts.

The timeframe for which it is proposed the authorization to apply a reduced tax rate, unless there will be significant changes in the current framework and situation, makes it unlikely that the analysis conducted in the preceding paragraphs will change before the date of expiry of the measure.

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 TFEU is not in itself within the exclusive competence of the European Union within the meaning of Article 3 of TFEU.

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. In any event, since this act is not a draft legislative act, it should not be transmitted to national Parliaments pursuant to Protocol No 2 to the Treaties for review of compliance with the subsidiarity principle.

• Proportionality

The proposal respects the principle of proportionality. The tax reduction does not exceed what is necessary to attain the objective in question.

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currently applicable national rate and a reasonable simultaneity factor in the use of electricity - to only thirty euros calculated with reference to a whole day at berth in the port

- **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 made by Italy and concerns only this Member State.

- **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 Italy suggests that the measure will have no impact on tax revenues on the short term. As mentioned above, the Italian authorities could not estimate the numbers of beneficiaries. The tax rate for shore-side electricity will still be above the minimum level of taxation set in Directive 2003/96/EC. Italy expects the measure to have a positive impact on the achievement of its environmental goals and in particular on the reduction of emissions, improvement of local air quality in port cities.

- **Regulatory fitness and simplification**

The measure does not provide for a simplification. It is the result of the request made by Italy 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 or administrative burden on the Union. The proposal therefore has no impact on the budget of the Union.

5. OTHER ELEMENTS

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

An implementation plan is not necessary. This proposal concerns an authorisation for a tax reduction for an individual Member State upon its own request. It is provided for a limited period. The tax rate that will apply will be equal to the minimum level of taxation set by the Energy Taxation Directive. 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 Italy will be allowed to apply a reduced taxation rate to electricity directly supplied to vessels, other than private pleasure craft, berthed in Italian ports ('shore-side electricity'). The tax rate must not be less than EUR 0.50 per MWh, i.e. the minimum level of taxation for electricity for business use set by the Directive. It will not be possible to supply electricity at a reduced rate to private pleasure craft as defined in Article 14(1)(c), second subparagraph of Directive 2003/96/EC.

Article 2 stipulates that the authorisation requested is granted for 6 years, from 18 October 2021 until 17 October 2027, which is the maximum period 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[1], and in particular Article 19 thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) By letter of 14 September 2020, Italy requested authorisation to apply a reduced rate of taxation to electricity directly supplied to maritime and inland waterway vessels, other than private pleasure craft, at berth in a port ('shore-side electricity') pursuant to Article 19 of Directive 2003/96/EC. By letter of 12 May 2021, Italy provided additional information.

(2) Through the reduced rate of taxation, Italy aims to promote the use of shore-side electricity, which is considered to be an environmentally less harmful way of satisfying the electricity needs of vessels at berth in a port than the burning of bunker fuels by such vessels.

(3) Insofar as the use of shore-side electricity avoids emissions of air pollutants resulting from the burning of bunker fuels by vessels at berth in a port, it improves local air quality in port cities. The reduced rate of taxation is therefore expected to contribute to the environmental, health and climate policy objectives of the Union.

(4) Allowing Italy to apply a reduced rate of taxation to shore-side electricity does not go beyond what is necessary to increase the use of such electricity, since on-board generation of electricity will remain a more competitive alternative in most cases. For the same reason, and because of the current relatively low degree of market penetration of the technology, the measure is unlikely to lead to significant distortions in competition during its lifetime and will thus not negatively affect the proper functioning of the internal market.

(5) In order to enable port and ship operators, as well as distributors and redistributors of electricity to continue promoting the use of shore-side electricity, it is appropriate to authorise Italy to apply a reduced rate of taxation to that type of electricity.

(6) In accordance with Article 19(2) of Directive 2003/96/EC, each authorisation granted under that provision is to be strictly limited in time. In order to ensure that the

[1] OJ L 283, 31.10.2003, p. 51.

authorisation period is sufficiently long so as not to discourage relevant economic operators from making the necessary investments, it is appropriate to grant the requested authorisation for six years from 18 October 2021. However, the authorisation should cease to apply from the date of application of any general provisions on tax advantages for shore-side electricity adopted by the Council under Article 113 or any other relevant provision of the Treaty on the Functioning of the European Union, should such provisions become applicable prior to the end-date of application of the requested authorisation.

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

HAS ADOPTED THIS DECISION:

Article 1

Italy is authorised to apply a reduced rate of taxation to electricity directly supplied to vessels, other than private pleasure craft, at berth in a port ('shore-side electricity'), provided that the minimum levels of taxation referred to in Article 10 of Directive 2003/96/EC are respected.

Article 2

This Decision shall apply from 18 October 2021 until 17 October 2027.

However, 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, provide for general rules on tax advantages for shore-side electricity, this Decision shall cease to apply on the day on which those general rules become applicable.

Article 3

This Decision is addressed to the Italian Republic.

Done at Brussels,

For the Council
The President