Council of the European Union

Brussels, 30 May 2024
(OR. en)

10549/24

Interinstitutional File: 2024/0121(NLE)

FISC 123
ECOFIN 620
ENER 267
TRANS 261

PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	29 May 2024
To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2024) 216 final
Subject:	Proposal for a COUNCIL IMPLEMENTING DECISION authorising France to apply reduced rates of taxation to electricity directly supplied to stationary aircraft at aerodromes open to public air traffic

Delegations will find attached document COM(2024) 216 final.

Encl.: COM(2024) 216 final

EUROPEAN
COMMISSION

Brussels, 29.5.2024
COM(2024) 216 final

2024/0121 (NLE)

Proposal for a

COUNCIL IMPLEMENTING DECISION

authorising France to apply reduced rates of taxation to electricity directly supplied to stationary aircraft at aerodromes open to public air traffic

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

Taxation of energy products and electricity in the European 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.

In the present case, France requested authorisation to apply reduced rates of taxation to final electricity consumption in the case of electricity directly supplied to stationary aircraft at aerodromes open to public air traffic, including private leisure aviation. The objective of this proposal is to grant that authorisation by means of a derogation valid, as requested, for a limited period.

By letter of 11 April 2022, the French authorities informed the Commission of their intention to apply the measure which is the subject of this request for a derogation, pursuant to Article 19 of Directive 2003/96/EC. The French authorities provided additional information on 25 October 2022 and 7 August 2023. Further information was sent by the French authorities on 30 October 2023, 7 November 2023, 27 December 2023 and 18 April 2024.

France requested authorisation to apply the minimum levels of taxation laid down in the Directive (Article 10(1)) to the electricity supplied via the shore-side network to the aircraft concerned by the request. France highlighted the fact that electricity used to power stationary aircraft at aerodromes open to public air traffic operated by undertakings in the course of their economic activity is eligible for the professional minimum tariff (EUR 0.5/MWh). However, the French authorities clarified that the European non-professional minimum tariff (EUR 1/MWh) applies to electricity used to power stationary aircraft at aerodromes open to public air traffic operated by private individuals for private leisure purposes (which the authorities consider to be a non-economic activity).

The period of validity initially requested was from 1 January 2024 until 31 December 2029, which is within the maximum period allowed by Article 19 of the Energy Taxation Directive. Following discussions between the French authorities and the Commission, in particular in view of the proposed revision of Directive 2003/96/EC[2], an early termination date of 31 December 2027 was agreed.

This tax reduction is aimed at encouraging the deployment and use of shore-side electricity in order to reduce air pollution in airport cities, improve local air quality and reduce noise pollution, improving inhabitants' health. The objective of the measure is the application of reduced rates per MWh consumed to the supply of electricity, via terminals, to all stationary aircraft at aerodromes open to public air traffic.

---

1 OJ L 283, 31.10.2003, p. 51.

2 Proposal for a Council Directive restructuring the Union framework for the taxation of energy products and electricity (recast), COM(2021) 563 final, of 14 July 2021.

With the requested measure, France intends to incentivise the use of shore-side electricity, which is considered a less polluting alternative to the generation of electricity on board the above-mentioned aircraft.

The French authorities indicated that the measure would be of general application and that the tax reduction would apply to all aircraft, regardless of flight status, using shore-side electricity when stationary at an aerodrome open to public air traffic.

In this regard, the French authorities stated that *de iure* the measure would cover all French aerodromes open to public air traffic, i.e. around 450 aerodromes. Nevertheless, *de facto* this would essentially concern 120 commercial aerodromes, in particular those forming part of the Trans-European Transport Network (TEN-T) which are the intended beneficiaries of this measure. These aerodromes would be more able to invest, in the short and medium term, in alternative means of electricity supply (pre-conditioned air unit, 400 Hz socket and mobile power unit) to the aircraft using them. The number of beneficiaries is therefore estimated at around 980 000 for 2019, the last representative year of normal air traffic (excluding the COVID-19 pandemic). The number of beneficiaries was 441 000 in 2020, and 553 000 in 2021.

According to the French authorities' estimates, the use of electrical means would result in a tenfold reduction in the CO_2 emissions of stationary aircraft. According to data taken from the annual assessment of gaseous emissions linked to air traffic in France carried out by the Directorate-General for Civil Aviation (DGAC) using its 'TARMAAC' calculator, in 2019 the 13 largest airport hubs emitted more than 230 000 tonnes of CO_2 solely through the use of auxiliary power units (APUs) for commercial traffic. Since the use of APUs is essential for at least the time it takes to connect and disconnect electrical means (30% of the time), the gain can be estimated at 145 tonnes of CO_2.

In this regard, the French authorities stated that in 2022, 1 kWh provided by the electricity network (400 Hz) cost on average EUR 0.276/kWh[3]. In December 2023, 1 kWh supplied via APUs cost EUR 0.18[4]. The cost of electricity from the grid is thus higher than the cost of using APUs.

With the tax reduction, France intends to encourage relevant operators to develop and use shore-side electricity in order to reduce airborne emissions and noise pollution from the combustion of fuel on board stationary aircraft, thus reducing CO_2 emissions. The application of a reduced rate of taxation would increase the competitiveness of shore-side electricity supply compared to electricity produced on board the aircraft concerned by means and products that emit high levels of greenhouse gases.

The expenditure related to this measure would amount to EUR 12 million for 2024 and EUR 16.3 million per year between 2025 and 2029. The total budgetary expenditure for this measure for the period initially requested (2024-2029) had been estimated at EUR 93.5 million.

---

3 https://analysesetdonnees.rte-france.com/bilan-electrique-prix#Vuedensemble.

4 The details of the calculation provided by the French authorities are as follows: with APU electricity performance of 35%, 1 kWh APU output is equivalent to approximately 1/0.35 = 2.86 kWh supplied at APU input. Taking into account the lower calorific value of kerosene (43 MJ/kg), i.e. 11.95 kWh/kg (as 1 Joule = 2.778 × 10-7 Kilowatt hours), 1 kWh supplied by the APU requires approximately 0.239 kg of kerosene. Since the average price of kerosene in December 2023 was EUR 769/tonne on the European market (see https://www.iata.org/en/publications/economics/fuel-monitor), the price of using the APU is EUR 0.18/kWh.

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

Taxation of electricity is governed by the Energy Taxation Directive 2003/96/EC, in particular Article 10 thereof. The Directive makes provision for minimum levels of taxation applicable to electricity, fixed as set out in Annex I (Table C). Articles 5, 15 and 17 make provision for the Member States to apply differentiated tax rates, including exemptions and reductions, to certain uses of electricity. However, these provisions do not, as such, provide for reduced taxation of shore-side electricity for aircraft.

The requested measure constitutes State aid and falls within the scope of the EU legislation in this field, in particular Commission Regulation (EU) No 651/2014[5].

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.'

Through the tax reduction under consideration, the French authorities intend to promote a way of supplying electricity to stationary aircraft at aerodromes open to public air traffic that is less harmful to the environment, and thereby to improve local air quality and reduce noise pollution.

The Commission has already recommended the use of shore-side electricity as an alternative to the generation of electricity on board vessels at berth and thereby recognised its environmental advantages[6].

Similarly, as part of the proposed revision of the Directive on the taxation of energy products and electricity, which envisages, among other things, the taxation of fuels supplied for air navigation, to encourage the development and adoption of solutions that are cleaner than the production of electricity on board, the Commission has made provision for all Member States to apply total or partial exemptions to electricity supplied to stationary aircraft and to ships at berth in ports.

In the present case, beneficiaries would be subject to a reduced level of taxation corresponding to the minimum levels of taxation applicable to electricity in the European Union, as provided for in the Energy Taxation Directive (i.e. EUR 0.5/MWh or EUR 1/MWh depending on the type of consumption), which is conducive to achievement of the above objectives.

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

France has requested that the measure should apply for the maximum period allowed by Article 19(2) of the Directive, i.e. 6 years (from January 2024 to December 2029). In principle, according to the French authorities the period of application of the derogation should be long enough not to discourage airport operators and electricity suppliers from starting or continuing to make the necessary investments in shore-side electricity facilities. The French authorities added that

[5] 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).

[6] 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).

this period will also provide the maximum possible legal certainty to aircraft operators, which have to plan their investments in on-board equipment. Following discussions between the French authorities and the Commission, in particular in view of the proposed revision of Directive 2003/96/EC, an early termination date of 31 December 2027 was agreed.

In support of their request, the French authorities also pointed out that 12 decrees limiting APUs[7] had recently been published, in July 2023[8]. These decrees cover 12 French airports under the control of the Noise Control Authority (ACNUSA)[9]. The decrees are intended to regulate the use time of CO_2-emitting APUs, which may account for 6% of an airport hub's CO_2 emissions[10]. The French authorities clarified that alternatives to APUs exist (thermal and electrical), offering a considerable reduction in the carbon footprint[11] and noise levels[12] whilst improving air quality. However, due to inadequate allocation of equipment to replace APUs, in the French authorities' view these regulatory measures are not sufficient to encourage the airports concerned to equip themselves with alternative means; furthermore, the limitation decrees mentioned above cover only 12 airports. The French authorities therefore consider a reduced excise rate applicable to electricity supplied to stationary aircraft covering all French airports to be an important incentive for the airport ecosystem.

Moreover, according to the French authorities an exceptional tax deduction scheme has also been put in place ('extra depreciation')[13] to support airports and ground-handling assistants investing in equipment using more environmentally friendly fuels (natural gas, electrical power, hydrogen, superethanol E85, non-road machinery combining electrical power and gasoline engines, and those combining petrol with natural fuel gas or liquefied petroleum gas). This measure makes it possible to deduct from the profit subject to income tax or corporation tax a sum equal to 40% of the original value, excluding financial costs, of non-road machinery entered as fixed assets. For small and medium-sized enterprises, this deduction increases to 60% of the value of the property acquired. The exceptional deduction is subject to compliance with Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid. This scheme applies to new investments acquired, leased or leased with a purchase option from 1 January 2020 until 31 December 2022. In view of the COVID-19 crisis, the recent application of this deduction, and the lack of liquidity of airports and ground-handling assistants, investments in less-emitting equipment have been reduced since the entry into force of this measure.

Lastly, the French authorities pointed out that the French Government has recently adopted a law to speed up the energy transition, which will facilitate the installation of photovoltaic panels at airports, in particular on airport buildings and green areas[14]. The objective of this law (which will be

---

7 An auxiliary power unit (APU) is a small turbojet at the rear of the fuselage which provides electrical energy and air conditioning when the aircraft is on the ground. It also enables the main jet engines to be started.

8 One decree for each hub, all entering into force on 1 December 2023. Five airports already had limitation decrees, which were repealed and replaced by those published in July 2023.

9 These 12 airports account for 85% of commercial movements in France (Paris-Charles de Gaulle, Paris-Orly, Paris-Le Bourget, Nice-Côte d'Azur, Nantes-Atlantique, Lyon-Saint Exupéry, Marseille-Provence, Bordeaux-Mérignac, Toulouse-Blagnac, Beauvais-Tillé, Lille-Lesquin, and Bâle-Mulhouse).

10 Figures provided by Aéroports de Paris (ADP) as part of the Holistic Green Airport (OLGA) programme funded by Horizon 2020.

11 Between 6 and 10 tonnes issued per year, compared with 408 to 1 166 tonnes with the APU for Guinault appliances (APU OFF – Guinault).

12 75 dB instead of 120 dB with the APU for Guinault appliances, for example.

13 Article 39i(f) of the General Tax Code, resulting from the provisions of Article 60 of Law No 2019-1479 of 29 December 2019 on finances for 2020.

14 Law No 2023-175 of 10 March 2023 on the acceleration of renewable energy production; the provisions promoting and simplifying the installation of photovoltaic panels are laid down in Title III of this Law.

complemented by two other laws on onshore wind and nuclear power) is to increase the share of renewable energy in France to 33% in 2030. Airports intend to develop fields of photovoltaic panels on their buildings in the coming years. Their goal is first to be self-sufficient in electricity, and then to generate more electricity.

The objective of these measures is, *inter alia*, to improve the framework conditions governing the use at airports of shore-side electricity for the aircraft concerned.

In these circumstances, it is therefore appropriate to grant the authorisation for the period in question.

State aid rules

The reduced tax rates envisaged by the French authorities are equal to the EU minimum levels of taxation for electricity pursuant to Article 10 of Directive 2003/96/EC.

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

- **Consistency with other Union policies**

Environment and climate change policy

The requested measure mainly concerns the EU's environment and climate change policy.

To the extent that it will help to reduce the use of fossil fuels on board stationary aircraft, the measure will contribute to the objective of improving local air quality and reducing noise pollution.

Directive 2008/50/EC on ambient air quality currently requires Member States to ensure that the levels of several air pollutants are kept below the limit values, target values and other air-quality standards established in the Directive. That obligation requires them, where applicable, to find solutions to problems such as emissions from stationary aircraft at aerodromes open to public air traffic.

According to the French authorities' estimates, the use of electrical means would result in a tenfold reduction in the CO_2 emissions of stationary aircraft. According to data taken from the annual assessment of gaseous emissions linked to air traffic in France carried out by the Directorate-General for Civil Aviation (DGAC) using its 'TARMAAC' calculator, in 2019 the 13 largest airport hubs emitted more than 230 000 tonnes of CO_2 solely through the use of auxiliary power units (APUs) for commercial traffic. Since the use of APUs is essential for at least the time it takes to connect and disconnect electrical means (30% of the time), the gain can be estimated at 145 tonnes of CO_2.

Energy policy

The measure requested is intended to accompany the aviation energy transition provided for in the European Green Deal and in particular in the texts of the 'Fit for 55' package (see Revision of the Trans-European Network Regulation (TEN-E[15])).

[15] Proposal for a regulation of the European Parliament and of the Council on guidelines for trans-European energy infrastructure and repealing Regulation (EU) No 347/2013 – COM (2020) 824 final.

The measure is in line with Regulation (EU) 2023/1804 of 13 September 2023[16] on the deployment of alternative fuels infrastructure and repealing Directive 2014/94/EU, with particular reference to the deployment of electricity infrastructure at airports[17].

Under these circumstances, not penalising the less-polluting alternative of shore-side electricity can be justified, allowing France to apply the reduced rates of taxation as requested.

Transport policy

In addition to the Trans-European Transport Network (TEN-T) guidelines requiring alternative fuels to be available in inland ports, seaports and airports, the measure requested by France is part of a process of complementarity with the existing framework set out in Commission Recommendation 2006/339/EC on the promotion of shore-side electricity by ships at berth in Union ports and the Communication from the Commission on strategic goals and recommendations for the Union's maritime transport policy.

Internal market and fair competition

From the point of view of the internal market and fair competition, according to the French authorities the measure simply reduces the tax distortion between two competing sources of electricity for stationary aircraft.

The electricity supplied to those aircraft is generally produced by means and products highly emitting of greenhouse gases, which are moreover normally exempt from all taxes, in particular excise duty under Article 14 of the Directive[18].

The application of a reduced level of taxation to electricity supplied to aircraft from the airport's electrical terminals would therefore reduce use of the internal means of generating electricity on aircraft, which are sources of pollution, and ensure fair competition between air transport undertakings producing electricity on board and those using electricity from devices provided by airports connected to the electrical terminals provided for that purpose.

Unless there are significant changes in the current framework and situation, the timeframe for which the authorisation to apply the reduced tax rates is proposed makes it unlikely that the analysis conducted in the preceding paragraphs will change before the date of expiry of the requested measure.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

Article 19 of Council Directive 2003/96/EC.

---

16 OJ L 234, 22.9.2023, p. 1.

17 OJ L 307, 28.10.2014, p. 1.

18 Furthermore, in accordance with Article L.312-17 of the *Code des impositions des biens et des services* (CIBS) [code on the taxation of goods and services], the consumption of electricity by the person who produced it does not constitute a chargeable event for excise duty where that person consumes all the electricity produced for their own needs and the quantities produced or likely to be produced, assessed per production site and according to the production method, do not exceed 240 million kWh per production site or the proportion consumed on the site of the electricity produced by electricity producers for which the production capacity installed on the site is less than 1 000 kW. In the present case, an aircraft must be regarded as a production site and the tax therefore does not apply to the quantities it produces and consumes within the thresholds set.

- **Subsidiarity (for non-exclusive competence)**

The field of indirect taxation covered by Article 113 TFEU does not in itself fall within the exclusive competence of the European Union within the meaning of Article 3 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 does not have to 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.

- **Choice of 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 by France and concerns this Member State only.

- **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.

- **Regulatory fitness and simplification**

The measure does not provide for any simplification. It is the result of the request made by France and concerns this Member State only.

- **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 envisaged for a limited period until 31 December 2027. The applicable rates are equal to the minimum levels of taxation set by the Energy Taxation Directive. The measure may be evaluated in the event of a request for a renewal after the validity period has expired.

- **Explanatory documents (for directives)**

The proposal does not require explanatory documents on transposition.

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

Article 1 stipulates that France will be authorised to apply a reduced rate of taxation to electricity directly supplied to stationary aircraft at aerodromes open to public air traffic ('shore-side electricity'). The rates of taxation must not be lower than the minimum levels of taxation applicable to electricity referred to in Article 10 of Directive 2003/96/EC and fixed in accordance with Table C of Annex I to that Directive.

Article 2 stipulates that the requested authorisation is granted with effect from 1 January 2024 until 31 December 2027, which is within the maximum period of 6 years allowed by the Directive.

2024/0121 (NLE)

Proposal for a

COUNCIL IMPLEMENTING DECISION

authorising France to apply reduced rates of taxation to electricity directly supplied to stationary aircraft at aerodromes open to public air traffic

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[19], and in particular Article 19 thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) By letter of 11 April 2022, France sought authorisation to apply a reduced rate of taxation to electricity directly supplied to stationary aircraft at aerodromes open to public air traffic, pursuant to Article 19 of Directive 2003/96/EC. The French authorities provided additional information on 25 October 2022 and 7 August 2023. Further information was sent by the French authorities on 30 October 2023, 7 November 2023, 27 December 2023 and 18 April 2024. The authorisation should apply until 31 December 2027.

(2) Through the reduced rates of taxation that it intends to apply, France's objective is to promote further the deployment and use of shore-side electricity. The use of such electricity is considered to be an environmentally less harmful way to meet the electricity needs of stationary aircraft at aerodromes open to public air traffic than the use of fossil fuels.

(3) In so far as the use of shore-side electricity reduces the emission of greenhouse gases and other air pollution produced by internal power generation on aircraft, it contributes to improving air quality and reducing noise pollution. The measure is therefore expected to contribute to the environmental, health and climate policy objectives of the European Union.

(4) Allowing France to apply reduced rates of taxation to shore-side electricity does not go beyond what is necessary, since on-board electricity production will remain the more competitive alternative in most cases. For the same reason, and because of the technology's current level of market penetration, which is relatively low, the measure is unlikely to lead to significant distortions of competition during its period of application, and will thus not negatively affect the proper functioning of the internal market.

(5) France should therefore be authorised to apply the reduced rates of taxation as requested, with effect from 1 January 2024.

(6) Pursuant to Article 19(2) of Directive 2003/96/EC, each authorisation granted under that provision is to be strictly limited in time. However, 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 a modified general system for the taxation

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

of energy products and electricity to which this authorisation would not be adapted, this authorisation should cease to apply.

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

HAS ADOPTED THIS DECISION:

Article 1

France is authorised to apply reduced rates of taxation to electricity directly supplied from shore-side electricity to stationary aircraft at aerodromes open to public air traffic, provided that the minimum levels of taxation referred to in Article 10(1) of Directive 2003/96/EC are respected.

Article 2

This Decision shall apply from 1 January 2024 until 31 December 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 French Republic.

Done at Brussels,

For the Council
The President