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PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	19 December 2024
To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2024) 583 final
Subject:	Proposal for a COUNCIL IMPLEMENTING DECISION authorising Spain to apply a reduced rate of taxation to electricity directly supplied to vessels berthed in ports in accordance with Directive 2003/96/EC

Delegations will find attached document COM(2024) 583 final.

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Brussels, 19.12.2024
COM(2024) 583 final

2024/0323 (NLE)

Proposal for a

COUNCIL IMPLEMENTING DECISION

authorising Spain to apply a reduced rate of taxation to electricity directly supplied to vessels berthed in ports in accordance with 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.

By virtue of Council Implementing Decision (EU) 2018/1491 of 2 October 2018[2], Spain has already been authorised to apply a reduced rate of taxation to electricity directly supplied to vessels, other than private pleasure craft[3], berthed in ports ('shore-side electricity').

The current derogation will expire on 31 December 2024. The objective of this proposal is to extend that authorisation as requested by Spain.

By letter dated 27 February 2024, the Spanish authorities informed the Commission of their intention to prolong the current measure until 31 December 2030. The Spanish authorities provided additional information by letters dated 11, 14 and 15 October 2024.

The intention of the Spanish authorities is to continue applying the reduced rate of EUR 0.5 per MWh of electricity tax to shore-side electricity. That tax rate is in accordance with the minimum rate of taxation for electricity for business use as laid down in Directive 2003/96/EC (i.e. EUR 0.5 per MWh).

The period of validity initially requested was from 1 January 2025 until 31 December 2030, which is within the maximum period allowed by Article 19 of the Energy Taxation Directive. Following discussions between the Spanish authorities and the Commission, in particular in view of the proposed revision of Directive 2003/96/EC[4], an earlier termination date of 31 December 2028 was agreed.

The aim of the tax measure is to reduce the impact of maritime transport on the environment. The use of shore-side electricity is considered to be an environmentally less harmful way of satisfying the electricity needs of vessels lying at berth in ports when compared with the burning of bunker fuels by those vessels.

Insofar as the use of shore-side electricity avoids emissions of air pollutants originating from the burning of bunker fuels by vessels at berth, it contributes to an improvement in local air quality in port cities. Under the specific conditions of the electricity generation structure in

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1 OJ L 283, 31.10.2003, p. 51-70.

2 OJ L 252, 8.10.2018, p. 40-41.

3 The term 'private pleasure craft' is defined in Article 14(1)(c), second subparagraph of Directive 2003/96/EC.

4 COM/2021/563 final: Proposal for a COUNCIL DIRECTIVE restructuring the Union framework for the taxation of energy products and electricity (recast).

Spain, the use of electricity from the onshore grid instead of electricity generated by burning bunker fuels on board is furthermore expected to reduce CO2 emissions and noise levels. The measure is therefore expected to contribute to the environmental, health and climate policy objectives of the Union.

The Spanish authorities acknowledge that the measure constitutes state aid and consider that it meets the material conditions in 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.

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

Taxation of electricity is governed by Directive 2003/96/EC, in particular Article 10. Article 14(1)(c) provides a mandatory 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

Assessment of the measure under Article 19 of Directive 2003/96/EC

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 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[5].

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.

Spain has requested that the measure should apply for the maximum period allowed by Article 19(2) of the Directive, i.e. 6 years (from 1 January 2025 to 31 December 2030). In principle, the period of application of the derogation should be long enough in order not to discourage port operators and electricity suppliers from continuing or starting to make the necessary investments in shore-side electricity facilities. This period will provide the legal certainty also to ship operators, that have to plan their investments in on-board equipment. Following discussions between the Spanish authorities and the Commission, in particular in view of the proposed revision of Directive 2003/96/EC, an earlier termination date of 31 December 2028 was agreed.

[5] 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).

Indeed, the derogation should not undermine future developments of the existing legal framework and should take into account the ongoing revision of the Energy Taxation Directive and a possible adoption by the Council of a legal act based on the Commission proposal to recast the Energy Taxation Directive[6].

In particular, as part of the proposed recast of the Directive on the taxation of energy products and electricity, the Commission has, among others, made provision for all Member States to apply exemptions, partial exemptions or reductions in the level of taxation to electricity directly supplied to vessels berthed in ports, in order to set an incentive for its development and use.

Under these circumstances, it appears appropriate to grant the authorisation for the period in question.

State aid rules

The reduced tax rate of EUR 0.5 per MWh envisaged by the Spanish authorities is in accordance with the minimum rate of taxation for electricity for business use as laid down in Directive 2003/96/EC.

The measure thus seems to fall under Article 44 of Commission Regulation (EU) 651/2014, which stipulates the conditions under which aid in the form of reductions in 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. 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, with Commission Regulation (EU) 651/2014. The proposal for a Council implementing decision is also without prejudice to the Member State's obligation to notify the aid to the Commission before putting it into effect, pursuant to Article 108(3) of TFEU, should the new aid not be covered by a block exemption.

- **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 to reduce the burning of bunker fuels on board the vessels in ports, the measure will in fact contribute to the objective of improving local air quality, reducing noise and fighting climate change. Directive 2008/50/EC on Ambient Air Quality[7] 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. This obligation requires 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 these problems exist the use of shore-side electricity will be encouraged as one element of the overall air

6 COM/2021/563 final: Proposal for a COUNCIL DIRECTIVE restructuring the Union framework for the taxation of energy products and electricity (recast).

7 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).

quality strategy. The use of shore-side electricity is also encouraged under Directive (EU) 2016/802[8] regulating the sulphur content in marine fuels.

According to the Spanish authorities, the use of shore-side electricity has not led to emission reductions of sulphur dioxide, nitric oxides, particulate matters and carbon oxides, because of very limited availability of facilities for the supply of shore-side electricity in Spain. Such facilities have become operational in the port of Barcelona in 2024 only. Project installations have already been prepared for the ports of Valencia, Bilbao and Algeciras. Other Spanish ports are also preparing preliminary projects for the deployment of facilities for the supply of shore-side electricity. The full potential of the measure has not been reached since costly equipment is still needed both on quays and on the ships. The use of shore-side electricity is of importance in the Spanish strive to meet the air quality standards in accordance with the directive 2008/50/EC of 21 May 2008 on ambient air quality and cleaner air for Europe.

Energy policy

The measure is in line with Regulation (EU) 2023/1804 of 13 September 2023[9] on the deployment of alternative fuels infrastructure and repealing Directive 2014/94/EU[10], 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. A similar measure has also been assessed as contributing to the achievement of the objectives of Union policies and legislation aiming to reduce the environmental footprint of maritime transport and to the development of certain economic activities under Article 107(3)(c) of TFEU[11].

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 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 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 have to make such declarations for every Member States whose territorial waters are concerned.

Transport policy

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8 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. 58–78).

9 OJ L 234, 22.9.2023, p. 1.

10 OJ L 307, 28.10.2014, p. 1.

11 Commission decision C(2024) 3934 final of 17.06.2024 in State aid case SA.105117 (OJ C/2024/5376, 03.09.2024)

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[12] and with the Commission Communication Strategic goals and recommendations for the EU's maritime transport policy[13].

Moreover, in accordance with Regulation (EU) 2023/1805 of the European Parliament and of the Council of 13 September 2023 on the use of renewable and low-carbon fuels in maritime transport, and amending Directive 2009/16/EC[14], from 2030 onwards vessels classified as cruise ships, ferries and container ships above 5,000 gross tonnage are required to use Onshore Power Supply systems, except in cases where zero-emission technology is available to them.

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.

The Spanish authorities have not observed changes in the ship owners' choice of ports linked to the availability of shore-side electricity facilities. The ship owners' choice of port is not based on whether shore side electricity is supplied or not.

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 timeframe for which it is proposed to prolong 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.

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12 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)

13 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.

14 OJ L 234, 22.09.2023, p. 48.

- **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.

- **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 Spain 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 Spain suggests that the measure will have a limited impact on tax revenues.

Spain expects the measure to have a positive impact on the achievement of its environmental goals and in particular the improvement of air quality in accordance with Directive 2008/50/EC on ambient air quality and cleaner air for Europe. The full potential of the measure has not been reached since costly equipment is still needed both on quays and on the ships.

- **Regulatory fitness and simplification**

The measure does not provide for a simplification. It is the result of the request made by Spain 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 until 31 December 2028. The tax rate that will apply will have to be in accordance with 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 Spain will be allowed to apply a reduced rate of electricity taxation to electricity directly supplied to vessels, other than private pleasure craft, berthed in Spanish ports (‘shore-side electricity’). The tax rate must be in line with 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 with effect from 1 January 2025, in continuity with the current Council Implementing Decision 2018/1491, until 31 December 2028, within 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[15], and in particular Article 19(1), first subparagraph, thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) By Council Implementing Decision (EU) 2018/1491[16] Spain was authorised to apply a reduced rate of excise duty to electricity directly supplied to vessels berthed in ports other than private pleasure craft ('shore-side electricity') in accordance with Article 19 of Directive 2003/96/EC until 31 December 2024.

(2) By letter of 27 February 2024, Spain sought authorisation to continue to apply a reduced rate of electricity tax to shore-side electricity pursuant to Article 19 of Directive 2003/96/EC. The Spanish authorities provided additional information related to the request by letters dated 11, 14 and 15 October 2024.

(3) With the reduced tax rate that it intends to apply, Spain aims to continue promoting the use of shore-side electricity. The use of such electricity is considered to be an environmentally less harmful way to satisfy the electricity needs of vessels lying at berth in ports than the burning of bunker fuels by those vessels.

(4) Insofar as the use of shore-side electricity avoids emissions of air pollutants originating from the burning of bunker fuels, it contributes to an improvement in the local air quality in port cities and to noise reduction. The measure is therefore expected to contribute to the environmental, health and climate policy objectives of the Union.

(5) Allowing Spain 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 the 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

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15 OJ L 283, 31.10.2003, p. 51, ELI: http://data.europa.eu/eli/dir/2003/96/oj.

16 Council Implementing Decision (EU) 2018/1491 of 2 October 2018 authorising Spain to apply a reduced rate of excise duty to electricity directly supplied to vessels at berth in a port, in accordance with Article 19 of Directive 2003/96/EC (OJ L 252, 8.10.2018, p. 40, ELI: http://data.europa.eu/eli/dec_impl/2018/1491/oj).

in competition during its period of application and will thus not negatively affect the proper functioning of the internal market.

(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 authorisation period is sufficiently long so as not to discourage relevant economic operators from making the necessary investments, it is appropriate to grant the authorisation for a four-year period. 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 of the Treaty on the Functioning of the European Union, or any other relevant provision of the Treaty, should such provisions become applicable during the period of the authorisation.

(7) In order to provide legal certainty to port and ship operators and to avoid a potential increase in the administrative burden for the distributors and redistributors of electricity, it should be ensured that Spain may continue to apply a reduced rate of taxation to shore-side electricity. The authorisation requested should therefore be granted with effect from 1 January 2025, in order to follow seamlessly on from the prior arrangements under Implementing Decision (EU) 2018/1491.

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

HAS ADOPTED THIS DECISION:

Article 1

Spain is authorised to apply a reduced taxation rate to electricity directly supplied to vessels, other than private pleasure craft, berthed in ports ('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 1 January 2025 until 31 December 2028.

However, should the Council, acting on the basis of Article 113 the Treaty on the Functioning of the European Union, or any other relevant provision of the Treaty, provide for general rules on tax advantages for shore-side electricity, that become applicable during the period set out in the first paragraph of this Article, this Decision shall cease to apply when those general rules become applicable.

Article 3

This Decision is addressed to the Kingdom of Spain.

Done at Brussels,

For the Council
The President