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PROPOSAL

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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
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Subject:	Proposal for a COUNCIL IMPLEMENTING DECISION authorising the Netherlands to apply a reduced rate of taxation to electricity directly provided to vessels at berth in a port in accordance with Article 19 of Directive 2003/96/EC

Delegations will find attached document COM(2021) 209 final.

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2021/0108 (NLE)

Proposal for a

COUNCIL IMPLEMENTING DECISION

authorising the Netherlands to apply a reduced rate of taxation to electricity directly provided to vessels 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.

The Netherlands asked to be authorised to apply a reduced rate of taxation to electricity supplied to shore-side electricity installations supplying electricity to vessels at berth, other than private pleasure craft, for a period of six years. The objective of this proposal is to grant that authorisation by means of a derogation valid, as requested, until 30 June 2027.

By letter dated 10 August 2020, the Dutch authorities informed the Commission of their intention to apply the measure.

The Netherlands is seeking for an authorisation to apply a reduced tax rate of EUR 0.50/MWh, equal to the minimum rate of taxation for the supply of electricity to installations supplying electricity entirely or almost entirely (90% or more) to vessels not being private pleasure craft. The reduced rate will only apply if the installation has a direct connection to the electric grid, to ensure correct application of the reduced rate.

The requested period of validity is from 1 July 2021 until 30 June 2027, which is within the maximum period allowed by Article 19 of the Energy Taxation Directive.

This reduction aims to provide an economic incentive for the deployment and use of shore-side electricity in order to contribute to sustainable ports and sustainable shipping and to reduce air pollution in port cities, improve local air quality and reduce noise for the health benefit of inhabitants.

The objective of the measure to be applied by the Netherlands is also to reduce the overall environmental impact of water-borne transport.

With the requested measure the Netherlands 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. This 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

[1] OJ L 283, 31.10.2003, p. 51–70.

used to produce electricity -and electricity produced- on board ships for navigation on inland waterways according to Article 15(1)(f) of the Directive, which was transposed into Dutch law.

The Dutch authorities have indicated that the tax reduction applies to all ships other than private pleasure craft, meaning that all ships involved in commercial navigation, regardless of size or flag, can benefit from the tax reduction. Generator bans for inland shipping are in place in certain ports.

As indicated in the request, in the inland waterway sector, most of the around 12.500 national and international inlands ships make use of shore-side electricity, which is available in most berths along the main corridors. There are currently very few shore-side electricity installations in the maritime sector, where their use by larger seagoing ships is limited to one RoRo ship and to fishing ships (trawlers) in the ports of Scheveningen and IJmuiden. However, the Dutch authorities plan to increase the availability of shore-side electricity for seagoing ships.

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.

The annual budgetary expenditure is estimated at EUR 1 million.

The Netherlands requested the authorisation to be granted until 30 June 2027, starting from 1 July 2021, within the maximum period allowed by Article 19(2) of the Directive.

With the tax reduction, the Netherlands wants to provide an incentive for relevant operators to develop and use shore-side electricity in order to reduce airborne emissions and noise 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.

The measure constitutes State aid and falls within the ambit of the EU legislation on this subject matter, in particular Commission Regulation 651/2014/EU[2].

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

[2] 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. 1–78).

Member State to introduce further exemptions or reductions for specific policy considerations.

By means of the tax reduction in question, the Dutch 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[3]. 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.

The Netherlands has requested that the measure applies 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 upcoming revision of the Energy Taxation Directive and a possible adoption by the Council of a legal act based on a Commission proposal for amendment of the Energy Taxation Directive. Such review follows the evaluation of the Energy Taxation Directive[4] and the Council Conclusions on the EU energy taxation framework from 28 November 2019[5]. In its Conclusions, the Council invited the Commission to analyse and evaluate possible options with a view to publishing in due course a proposal for the revision of the Energy Taxation Directive. It also called on the Commission to give particular consideration to the scope of the Directive, to minimum rates and to specific tax reductions and exemptions.

Under these circumstances, while it appears appropriate to grant the authorisation for the requested period, the validity of the derogation should be made subject to the entry into application of general provisions in the matter at a point in time earlier than the end of June 2027.

State aid rules

The reduced tax rate of EUR 0.50 per MWh envisaged by the Dutch 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 (GBER), which stipulates the conditions under which aid in the form of reductions in

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3 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).

4 SWD(2019) 329 final.

5 Council conclusions of 28 November 2019, 14608/19, FISC 458.

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.

As indicated in their request, the Dutch authorities will inform the Commission of the measure within 20 working days following its entry into force.

- **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 and reducing noise. In its Article 13, Directive 2008/50/EC on Ambient Air Quality[6] 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 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[7] 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 this regards, the Dutch authorities expect that local emissions of air pollutants (NOx, SOx, PM10, PM2.5) from on-board electricity generation could be reduced at 95% 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. In this regard, the Dutch authorities underlined that, while the actual saving of CO2 emissions depends on the quality of the electricity used, in the Dutch electricity mix, the estimated savings would be of between 28% and 67%, depending on the generator load, with this proportion set to rise in future.

Energy policy

[6] 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).

[7] 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).

The measure is in line with Directive 2014/94/EU on the deployment of alternative fuels infrastructure[8], 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[9].

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 and the optional tax treatment provided by Article 15(1)(f) of the Directive (actually implemented by the Netherlands). Under these circumstances, it can be justified not to penalize the less-polluting alternative of shore-side electricity by allowing the Netherlands 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[10] and with the Commission Communication Strategic goals and recommendations for the EU's maritime transport policy[11].

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 there are currently few vessels that use shore-side electricity on a commercial basis. 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

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8 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. 1–20)

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

10 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)

11 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.

of the oil price and are hence 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[12] 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 the Netherlands 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. A reduced rate for shore-side electricity will reduce the difference in the tax treatment of shore-side electricity and the (mineral) energy products used to generate electricity on board.

The electricity suppliers are liable for the energy tax and the sustainable energy surcharge (*Opslag Duurzame Energie*, ODE). In their energy tax declaration they directly apply the reduced rate. The direct beneficiaries are the operators of the installations supplying electricity to vessels at berth. It is expected that the operators will pass on all or part of the financial advantage to the users of the shore-side electricity, which are the owners of inland vessels and sea going ships. Existing users and their representatives will insist that port authorities have an interest in making shore-side electricity financially attractive for the users.

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 Dutch authorities argue that the choice of ports depends on the cargo's destination rather than on the reduced costs of berthing caused by the tax reduction for shore-side electricity.

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.

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[12] 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)

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.

• 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 the Netherlands 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 the Netherlands suggests that the measure will have a limited impact on tax revenues and the tax rate for shore-side electricity will still be above the minimum level of taxation set in Directive 2003/96/EC. The Netherlands expects the measure to have a positive impact on the achievement of its environmental goals and in particular the improvement of local air quality and reduction of noise in port cities.

In more detail, as an estimation of the tax expenditures from the measure, according to the Dutch authorities, a loss of EUR 1 million per year is expected for the coming years.

At the same time, the environmental benefits can be significant. The Dutch authorities underlined that, while the actual saving of CO2 emissions depends on the quality of the electricity used, the estimated savings would be of between 28% and 67%, depending on the generator load, with this proportion set to rise in future. Moreover, Dutch authorities expect that local emissions of air pollutants from on-board electricity generation could be reduced by 95%; noise, vibration levels and nitrogen deposition could also be significantly reduced.

- **Regulatory fitness and simplification**

The measure does not provide for a simplification. It is the result of the request made by the Netherlands 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 30 June 2027. The applicable tax rate 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 the Netherlands will be allowed to apply a reduced taxation rate to electricity directly supplied to vessels other than private pleasure craft berthed in 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 with effect from 1 July 2021 until 30 June 2027, as requested by the Netherlands, within the maximum period of 6 years allowed by the Directive.

2021/0108 (NLE)

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COUNCIL IMPLEMENTING DECISION

authorising the Netherlands to apply a reduced rate of taxation to electricity directly provided to vessels at berth in a port in accordance with Article 19 of Directive 2003/96/EC

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 10 August 2020, the Netherlands sought authorisation to apply a reduced rate of taxation to electricity directly provided to maritime and inland waterway vessels, berthed in ports ('shore-side electricity') pursuant to Article 19 of Directive 2003/96/EC.

(2) With the reduced tax rate that it intends to apply, the Netherlands aims at further promoting the deployment and 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.

(3) 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 to the local air quality in port cities and to noise reduction. Under the specific conditions of the electricity generation structure in the Netherlands, the use of shore-side electricity instead of electricity generated by burning bunker fuels is, in particular, expected to reduce CO2 emissions, other air pollutants and noise. The measure is therefore expected to contribute to the environmental, health and climate policy objectives of the Union.

(4) Allowing the Netherlands 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 in competition during its lifetime and will thus not negatively affect the proper functioning of the internal market.

(5) 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 authorisation from 1 July 2021 until 30 June 2027. 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 30 June 2027.

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

HAS ADOPTED THIS DECISION:

Article 1

The Netherlands is authorised to apply a reduced taxation rate to electricity directly supplied to shore-side electricity installations for vessels, other than private pleasure craft, berthed in ports, 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 July 2021 until 30 June 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 Kingdom of the Netherlands.

Done at Brussels,

For the Council
The President