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Proposal for a

COUNCIL IMPLEMENTING DECISION

authorising Sweden to apply a reduced rate of electricity tax to electricity directly provided to vessels at berth in a port ('shore-side electricity') in accordance with Article 19 of Directive 2003/96/EC

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

Taxation of energy products and electricity in the Union is governed by Council Directive 2003/96/EC¹ (hereafter referred to as the “Energy Taxation Directive” or the “Directive”).

Pursuant to Article 19(1) of the Directive, in addition to the provisions foreseen 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 objective of this proposal is to allow Sweden to apply a reduced rate of electricity tax to electricity directly provided to vessels at berth in a port (hereafter referred to as 'shore-side electricity'). This exemption is meant to give an economic incentive to the use of shore-side electricity in order to reduce air pollution in port cities.

2 THE REQUEST AND ITS GENERAL CONTEXT

By letter dated 4 March 2010, the Swedish authorities informed the Commission that they intended to apply a reduced rate of 0,5 öre/kWh of electricity tax to shore-side electricity. Supplementary information was received from Sweden on 4 October 2010.

Sweden has requested for the reduction to be granted for a period of six years, which is the maximum period indicated in Article 19(2) of the Directive.

With the requested measure Sweden 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 the vessels lying at berth in a port. Currently shore-side electricity has to be taxed at the general rate of the electricity tax, which is 28 öre/kWh (18,5 öre/kWh in Northern Sweden). On the other hand, Member States have to exempt electricity generated on board ships for navigation within Community waters according to Article 14(1)(c) of the Energy Taxation Directive and may do so in the case of electricity produced on board ships for navigation on inland waterways according to Article 15(1)(f).

Sweden would like to apply a reduced rate of 0,5 öre/kWh to shore-side electricity, considering that by applying this tax rate the minimum rate of taxation for electricity as laid down in Directive 2003/96/EC is respected. The reduced rate of electricity taxation is to apply to all supplies of shore-side electricity of at least 380 volt to vessels used for commercial shipping of at least 400 gross tonnage. The limit is considered appropriate so as to ensure that the absolute majority of vessels used in international traffic and larger vessels used in national traffic will be covered by the proposed reduction. These are the vessels considered to be responsible for the largest part of emissions caused by the running of auxiliary motors on board while berthed in ports.

¹ Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for taxation of energy products and electricity, OJ L 283 of 31.10.2003 p. 51.

With the tax reduction Sweden wants to give an incentive for vessel operators to use shore-side electricity in order to reduce airborne emissions and noise from vessels at berth as well as CO₂ emissions. The application of a reduced tax rate would improve the competitive situation of shore-side electricity relative to the burning of bunker fuels on board, which is fully tax exempt. The Swedish authorities note that facilities for the use of shore-side electricity currently exist in five Swedish ports (Stockholm, Gothenburg, Piteå, Helsingborg, Luleå) and that preparations for the use of shore-side electricity are being undertaken in a number of further ports in Sweden. Nevertheless, the number of vessels availing themselves of this option is currently limited. They indicate that under the assumption that 20% of the quantity of vessel fuel sold would be replaced by shore-side electricity, annual emission reductions of 76 tonnes sulphur dioxide, 830 tonnes of nitric oxides, 8.4 tonnes of particulates and 42 000 tonnes of carbon dioxide could be achieved.

Sweden considers that this measure is in line with Commission recommendation 2006/339/EC² on the promotion of shore-side electricity for use by ships at berth in Community ports and with the Commission Communication "Strategic goals and recommendations for the EU's maritime transport policy until 2018" (COM(2009)8)³.

Arguments of the Swedish authorities concerning the impact of the measure on the internal market

The Swedish authorities acknowledge that the measure constitutes state aid and that it favours owners of ships used for commercial shipping. They also claim that it is neutral with respect to competition between ship owners or operators since it is available to all ships at berth in Swedish ports independently of their flag. As regards the effect on trade between Member States, Sweden assumes that the effect will be negligible as 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.

Existing provisions in the area of the proposal

Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity, in particular Articles 14(1)(c) and 15(1)(f).

3. ASSESSMENT OF THE MEASURE UNDER ARTICLE 19 OF DIRECTIVE 2003/96/EC

Specific policy considerations

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."

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 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.

By means of the tax reduction in question the Swedish 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 thereby to improve local air quality. As Sweden has pointed out, the Commission has in fact 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 advantages⁴. It is noted that electricity supplied to vessels at berth is currently taxed at 28 öre/kWh in Sweden (18,5 öre/kWh in Northern Sweden). The requested exemption would thus lead to an additional incentive for the use of this technology equal to 27,5 öre/kWh, or 29,83 €/MWh⁵ (18 öre/kWh, or 19,53 €/MWh in Northern Sweden) and therefore contribute to the stated policy objective.

The Commission also notes that in Sweden the necessary on-shore infrastructure is already in place in several ports. In such a situation, reduced operational costs in the form of a lower end price for the electricity consumed can be an effective incentive for a more widespread use of existing installations. In so far as the measure is also intended to increase the number of ports offering the possibility to use shore-side electricity, the Commission expects that additional policy measures promoting the built-up of the on-shore infrastructure are likely to be necessary to achieve the policy objective of the tax exemption in question. Overall, at the current state of development of shore-side electricity in Sweden the Commission agrees that the application of a significantly reduced tax rate could act as an important signal for port authorities and ship owners alike to further invest in the technology, especially if it is followed up by accompanying measures promoting shore-side electricity, be it in the form of financial incentives or ultimately use obligations. In this context attention is drawn not only to the fact that shore-side electricity is already used in a number of ports, but also to the considerable interest that was manifested by stakeholders in reaction to the public consultation on the design of the proposed tax reduction conducted by the Swedish authorities.

As regards the nature of the policy objective pursued the Commission would point out that the promotion of shore-side electricity is in fact a common policy objective that should be pursued by the Union as a whole. This is stated clearly in the Commission Communication COM(2007)575 on an integrated maritime policy and the accompanying Commission staff working paper⁶, which announce that this objective will be taken up in the context of a revision of Directive 2003/96/EC. However, the purpose of Article 19 is to react to specific circumstances in individual Member States that are not reflected in the Directive itself. A derogation on the basis of Article 19 which pursues the policy objective of promoting shore-side electricity can therefore only be granted as a transitional measure before this objective has been addressed in the context of a revision of Directive 2003/96/EC.

Consistency with the other policies and objectives of the Union

The requested measure concerns mainly the EU's environmental policy. To the extent that it will help to reduce the burning of bunker fuels on board the vessels in ports the measure will

⁴ Cf. note 2 above.

⁵ Based on the exchange rate on 1 October 2010, i.e. 9.2183 SEK = 1 € OJ C 286 of 2.10.2010.

⁶ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – An Integrated Maritime Policy for the European Union of 10.10.2007, COM (2007) 575 final and Commission staff working document – Accompanying document to the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – An Integrated Maritime Policy for the European Union of 10.10.2007, SEC (2007) 1278.

in fact contribute to the objective of improving local air quality. The measure is also likely to lead to a reduction of CO₂ emissions to the extent that the electricity mix from the onshore grid is less carbon intensive than the electricity produced on board by burning bunker fuels, due to higher system efficiency and the difference in input fuels used. In this context it can be noted that the average electricity mix in the relevant market area is considerably less carbon-intensive than the EU average. Although the carbon intensity of additional electricity supplied is usually higher than the one of the average electricity mix and highly dependent on the time of day when the additional demand occurs, CO₂ reductions resulting from the measure will remain relatively significant⁷.

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 position 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 have to make such declarations for every Member States whose territorial waters are concerned. Under these circumstances it can be justified not to penalize the less-polluting alternative of shore-side electricity by allowing Sweden to apply a reduced rate of taxation.

As regards electricity consumed by vessels at berth in ports along inland waterways, and contrary to the situation obtaining in maritime ports, exemption of the electricity produced on board is merely optional for Member States (Article 15(1)(f)). Therefore, no legal obstacle would prevent Member States from treating equally shore-side electricity and on-board generation in ports along inland waterways. However, the option offered by Article 15(1)(f) of the Directive not to tax electricity generated on board is again to be explained by considerations of practicability on the part of the legislator and at the same time closely linked to the optional tax advantages for the purposes of navigation on inland waterways. The majority of Member States, among which Sweden, have decided not to tax fuels used for these purposes. They also consider it impractical to tax the input fuel instead of taxing the electricity [cf. Article 21(5), third subparagraph, of Directive 2003/96/EC] because this would suppose, at the very least, a separate treatment of the fuel used for the generation of electricity. In fact, in deciding whether to extend the tax exemption applicable to maritime shipping to fuels used for navigation on inland waterways, Member States will take into consideration a number of aspects, including wider objectives of national transport policy such as environmental considerations, which may lead them not to tax fuels used for these purposes.

⁷ The combined share of renewables and nuclear in the NordPool electricity mix was at 86.6% in 2008, cf. http://www.nordpoolspot.com/reports/Production_split/. However, both nuclear and hydropower, which accounts for most of the renewables generation in the Nordic market, are mainly used as base load whereas peak load is more carbon intensive on average.

It is therefore considered justified, at the present stage, to extend the possibility to exempt shore-side electricity to ports in inland waterways.

Internal market and fair competition

From the point of view of the internal market and fair competition the measure requested would reduce the existing 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 reiterated that there are currently very few vessels which 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 of the oil price and are therefore very difficult, the available evidence indicates 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 generation⁸ and would therefore not, in any event, represent a significant competitive benefit on 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 Sweden will respect the minimum level of taxation prescribed by Directive 2003/96/EC. Furthermore, Sweden intends to limit the tax advantage to vessels with a gross tonnage of at least 400 as well as to supplies of shore-side electricity of at least 380 volts in order to target the measure to those vessels with significant on-board generation while limiting the overall number of beneficiaries. As explained by the Swedish authorities, both threshold values have been set at a relatively low level in response to concerns by national associations that otherwise national vessels might be disadvantaged as against non-Swedish ones. Conversely, it can reasonably be assumed that vessels that might be excluded from the tax benefit through the threshold values will rather be national than from other EU countries and that the threshold values will therefore in any case not lead to a more advantageous tax treatment of national economic actors over their competitors from other EU Member States.

Concerning competition between ports, the Swedish authorities have stated that they consider as negligible 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. 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.

Finally, it can be added that the timeframe for which it is proposed to authorize the application of a reduced tax rate is sufficiently short to make it unlikely that the analysis conducted in the two preceding paragraphs will change before the date of expiry.

⁸ 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).

Period of application of the measure and development of the EU framework on Energy Taxation

In principle, the period of application of the derogation should be long enough in order not to discourage port operators from making the necessary investments. This objective has to be reconciled, though, with the need not to undermine future developments of the existing legal framework. In this regard, it should be borne in mind that the Commission is currently assessing a possible revision of Directive 2003/96/EC with a view to bringing it more closely in line with the objectives of energy and environment policies and in particular the climate change objectives for the period after 2013. A corresponding proposal could also address the issue of the tax treatment of shore-side electricity. Under these circumstances, it appears appropriate to grant the authorisation requested for a period of three years, subject however to the entry into application of general provisions in the matter, at a point in time earlier than the expiry thus foreseen.

4. STATE AID RULES

On the basis of the relevant exchange rate of 1 October 2010 as published in the Official Journal of the European Union⁹, the tax rate of 0,5 öre/kWh envisaged by the Swedish authorities respects the minimum level of taxation pursuant to Article 10 of Directive 2003/96/EC. The measure therefore falls under the so-called General Block Exemption Regulation (Regulation (EC) No 800/2008)¹⁰ and is, by consequence, exempt from the prior notification requirement.

5. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENT

Consultation of interested parties

This proposal is based on a request made by Sweden 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.

⁹ The exchange rate relevant for assessing compliance with the minimum rates, cf. Article 13 (1) of Directive 2003/96/EC, cf. also footnote 5 above.

¹⁰ Commission Regulation (EC) No 800/2008 of 6 August 2008 declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty (General block exemption Regulation), OJ L 214, 9.8.2008.

6. LEGAL ELEMENTS OF THE PROPOSAL

The proposal aims at authorising Sweden to derogate from the general provisions of Council Directive 2003/96/EC and to apply a reduced rate of 0,5 öre/kWh electricity tax to electricity directly provided to vessels at berth in a port.

Legal basis

Article 19 of Council Directive 2003/96/EC.

Subsidiarity principle

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

However, the exercise by Member States of their competences in this field is strictly circumscribed and limited by existing EU law. Pursuant to Article 19 of Directive 2003/96/EC, only the Council is empowered to authorise a Member State to introduce further exemptions or reductions within the meaning of that provision. Member States cannot substitute themselves for the Council.

The proposal therefore respects the principle of subsidiarity.

Proportionality principle

The proposal respects the principle of proportionality. The tax reduction does not exceed what is necessary to attain the objective in question (cf. the considerations on the Internal market and fair competition aspects, above).

Choice of instruments

Instrument(s) proposed: Council Implementing Decision.

Article 19 of Directive 2003/96 makes provision for this type of measure only.

7. 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.

Proposal for a

COUNCIL IMPLEMENTING DECISION

authorising Sweden to apply a reduced rate of electricity tax to electricity directly provided to vessels at berth in a port ('shore-side electricity') 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 electricity¹¹, and in particular Article 19 thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) By letter of 4 March 2010, Sweden sought the authorisation to apply a reduced rate of electricity tax to electricity directly provided to vessels at berth in a port ('shore-side electricity') pursuant to Article 19 of Directive 2003/96/EC.
- (2) With the tax reduction it intends to apply, Sweden aims at promoting a more widespread use of shore-side electricity as an environmentally less harmful way for ships to satisfy their electricity needs while lying at berth in ports as compared to the burning of bunker fuels on board the vessels.
- (3) In so far as the use of shore-side electricity avoids emissions of air pollutants associated with the burning of bunker fuels on board the vessels at berth, it contributes to an improvement of local air quality in port cities. Under the specific conditions of the electricity generation structure in the region concerned, i.e. the Nordic electricity market including Sweden, Denmark, Finland and Norway, the use of electricity from the onshore grid instead of electricity generated by burning bunker fuels on board is furthermore expected to avoid CO₂ emissions. The measure is therefore expected to contribute to the EU's environmental, health and climate policy objectives.
- (4) Allowing Sweden to apply a reduced rate of electricity taxation to shore-side electricity does not go beyond what is necessary to achieve the above mentioned objective, since on-board generation 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.

¹¹ OJ L 283, 31.10.2003, p. 51.

- (5) It follows from Article 19(2) of Directive 2003/96/EC that each authorisation granted under that provision must be strictly limited in time. Given the need for a period long enough in order not to discourage port operators from making the necessary investments, but also the need not to undermine future developments of the existing legal framework, it is appropriate to grant the authorisation requested for a period of three years, subject however to the entry into application of general provisions in the matter, at a point in time earlier than the expiry thus foreseen,

HAS ADOPTED THIS DECISION:

Article 1

Sweden is hereby authorised to apply a reduced rate of electricity taxation to electricity directly supplied to vessels berthed in ports, other than private pleasure craft, provided that the minimum levels of taxation pursuant to Article 10 of Directive 2003/96/EC are respected.

Article 2

This Decision shall apply from the 20th day following its publication in the Official Journal of the European Union. It shall cease to apply three years thereafter.

However, should the Council, acting on the basis of Article 113 TFEU, 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 Sweden.

Done at Brussels,

For the Council
The President