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Proposal for a

COUNCIL IMPLEMENTING DECISION

authorising Sweden to apply a reduced rate of taxation on 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

Taxation of energy products and electricity in the Union is governed by Council Directive 2003/96/EC (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 taxation on 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.

The aim of the measure to be applied by Sweden is to reduce the environmental impact of maritime transport.

The request and its general context

On 20 June 2011 the Council adopted Council Implementing Decision 2011/384/EU 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 ⁽¹⁾. This Decision expires on 25 June 2014.

By letter dated 13 December 2013, the Swedish authorities requested a new authorisation decision which will allow Sweden to continue to apply the tax reduction. 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 vessels lying at berth in a port.

The intention of the Swedish authorities is to continue to apply a reduced rate of SEK 50 (EUR 5.79) ⁽²⁾ per MWh of electricity tax to shore-side electricity. This tax rate is above the minimum rate of taxation for electricity as laid down in Directive 2003/96/EC. It is also above the national rate of taxation on electricity for business use which is SEK 5 (EUR 0.59) per MWh. However Sweden does not consider that the use of shore-side electricity constitutes business use. Thus without the authorisation the applicable national rates to shore-side electricity would be SEK 293 (EUR 33.94) per MWh or SEK 185 (EUR 21.43) per MWh in Northern Sweden.

On the other hand, Article 14(1)(c) of the Energy Taxation Directive obliges Member States to exempt energy products used as fuel by ships for navigation within EU waters. This exemption covers also the energy products used to produce electricity on board ships at berth in ports. Member States may also exempt energy products used by ships for navigation on inland waterways according to Article 15(1)(f) thereof which also covers the production of electricity on board. Thus in most cases the system of taxation based on the Energy Taxation Directive does not affect the costs for producing electricity on board a ship at berth in a port even though such production could have negative health and environmental effects by deteriorating air quality and increasing noise levels in ports.

⁽¹⁾ OJ L 170, 30.6.2011, pp. 36–37.

⁽²⁾ All calculations are based on the exchange rate on 1 October 2013, i.e. SEK 8.6329 for EUR 1. Cf. OJ C 286 of 2.10.2013.

Sweden will apply the reduced rate of electricity taxation to all supplies of shore-side electricity of at least 380 V to vessels used for commercial shipping of at least 400 gross tonnage. The limit is considered appropriate by the Swedish authorities 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.

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 (except ships for private use) 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.

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

Sweden considers that this measure is in line with Commission recommendation 2006/339/EC on the promotion of shore-side electricity for use by ships at berth in Community ports ⁽³⁾ and with the Commission Communication Strategic goals and recommendations for the EU's maritime transport policy until 2018 ⁽⁴⁾. In this regard, it is noted that from June 2011 on, Member States have an unconditional obligation to meet air quality standards for relevant pollutants like particulate matter ⁽⁵⁾. This obligation requires them to find solutions to problems such as ship emissions at berth in ports where this is relevant and it is conceivable that in ports with these problems the use of shore-side electricity will be encouraged as one element of the overall air quality strategy.

With the tax reduction Sweden wants to continue to provide 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 strengthen the competitiveness of shore-side electricity relative to the burning of bunker fuels on board, which is fully tax exempt. The Swedish authorities informed the Commission that since the measure has been in application additional shore-side electricity facilities have been built and the number of Swedish ports who have such facilities has increased from five to eight (Stockholm, Gothenburg, Piteå, Helsingborg, Luleå, Karlskrona, Trelleborg and Ystad) and that at present plans for the construction of additional facilities in the port of Stockholm are in place. The Swedish authorities informed the Commission that vessels used by the forestry sector are the most intensive users of shore-side electricity facilities. Ports serving this industry have the highest share of use of shore-side electricity. The facilities are normally used in cases where vessels are berthed for longer periods. The share of vessels using shore-side electricity facilities differs between ports (from 33 to almost 100 %) depending on the port and the type of vessels using it. According to the information provided by Sweden the use of shore-side electricity has led to emission reductions of sulphur dioxide, nitric oxides,

⁽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⁾ 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.

⁽⁵⁾ Cf. 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 of 11.6.2008).

particulate matter and carbon oxides. However the Swedish authorities do not have precise estimates of the emission reductions which can be attributed to the application of the measure.

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).

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.’

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 advantages ⁽⁶⁾. Without the measure electricity supplied to vessels at berth would be taxed at SEK 293 (EUR 33.94) per MWh or SEK 185 (EUR 21.43) per MWh in Northern Sweden. The requested exemption would thus lead to an additional incentive for the use of this technology equal to SEK 243 or EUR 28.15 per MWh (SEK 135 or EUR 15.64 per MWh in Northern Sweden) and therefore contribute to the stated policy objective.

The Commission also notes that since the measure has been in application Sweden has further developed its on-shore infrastructure. The tax reduction seems to have been an effective incentive for a more widespread use of shore-side electricity. The Swedish authorities informed the Commission that they had requested or obliged some of the ports to introduce shore-side electricity facilities. However Sweden did not report on the introduction of any legal obligations or financial incentives for the use of the facilities. There is interest in the development of the infrastructure expressed in particular by the forestry sector as part of its efforts to achieve more environmentally friendly transport. At the current state of development of shore-side electricity in Sweden the Commission considers that the application of a significantly reduced tax rate remains an adequate instrument to stimulate port authorities and ship owners alike to further invest in the technology also taking into consideration the lack of other specific national measures incentivising the use of shore-side electricity.

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 on an integrated maritime policy ⁽⁷⁾ and the accompanying Commission staff working document ⁽⁸⁾. The Commission suggested shore-side electricity provided to ships while at berth in ports to be exempted from energy taxation in its proposal for revision of the Energy Taxation Directive ⁽⁹⁾.

⁽⁶⁾ Cf. note 3 above.

⁽⁷⁾ COM(2007) 575 final of 10 October 2007.

⁽⁸⁾ SEC(2007) 1283 final of 10 October 2007.

⁽⁹⁾ COM(2011) 169 final of 13 April 2011.

However at present the Commission proposal is not yet adopted by the Council. In the meantime economic operators in Sweden and the Swedish authorities should be provided with legal certainty as regards the tax measures applied for the purpose of promoting the use of shore-side electricity. Currently the only possibility to introduce a favourable tax treatment to shore-side electricity is provided by Article 19. However its purpose 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 by the Council 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 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 should remain relatively significant ⁽¹⁰⁾.

The measure is in line with the Commission proposal for a directive on the deployment of alternative fuels infrastructure which addresses the issue of installing shore-side electricity supply facilities in ports where this is cost-effective and has environmental benefits ⁽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 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

⁽¹⁰⁾ The combined share of renewables and nuclear in Sweden's electricity mix was at 95.4 % in 2012, and for the NordPool electricity mix it was at 90 % cf. 'http://www.nordpoolspot.com/Global/Download%20Center/TSO/Nordic-production-split_2004-2012.pdf'. However, both nuclear and hydropower, which accounts for most of the renewables generation in Sweden and in the NordPool in general, are mainly used as base load whereas peak load is more carbon intensive on average.

⁽¹¹⁾ COM(2013) 18 final of 24 January 2013.

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.

It is therefore considered justified, at the present stage, to extend the possibility to apply a reduced level of taxation to shore-side electricity to ports in inland waterways.

Internal market and fair competition

The Commission has not received any complaints regarding the practical application of the tax measure authorised by Council Implementing Decision 2011/384/EU. 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 the Swedish authorities have not provided information on considerable increases of the number of vessels equipped for the use of shore-side electricity. It should be noted that according to their calculations the cost of using shore-side electricity remains relatively high compared to on-board generation with the use of tax exempted bunker fuels. In particular the costs for ship owners include grid charges and investment costs for on-board equipment. Although precise cost projections depend crucially on the development of the oil price and are therefore very difficult, the latest available assessments indicate that overall even a full tax exemption would in most cases not reduce operational costs of shore-side electricity below the costs of on-board generation⁽¹²⁾ 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 has not taken place with the application of Council Implementing Decision 2011/384/EU and it is unlikely to emerge since Sweden intends to continue to respect the minimum level of taxation prescribed by the Energy Taxation Directive. Furthermore, Sweden intends to keep the limit for 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

⁽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).

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 reported that they have not observed considerable changes in the ship owners' choice of ports which can be linked to the availability of shore-side electricity facilities. 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 economically feasible 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 authorize the application of a reduced tax rate reflects to a large extent the timeframe in the Commission proposal of eight years for the tax exemption for shore-side electricity.

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. In this particular case the period of application of the measure would have been prolonged and the scale of the tax reduction increased by the Commission proposal for revision of the Energy Taxation Directive which envisages an obligatory exemption for shore-side electricity for a period of eight years after its entry into effect. Still the derogation should not undermine future developments of the existing legal framework and should take into account the possible adoption by the Council of a legal act based on the Commission proposal for amendment of the Energy Taxation Directive. Under these circumstances, it appears appropriate to grant the authorisation requested for the maximum period of six years allowed by the Directive, subject however to the entry into application of general provisions in the matter, at a point in time earlier than the expiry thus foreseen. This period of time will provide legal certainty to ship and port operators which have to plan their investments in shore-side electricity facilities or on-board equipment. It will also allow the Swedish authorities to collect data in order to fully assess the effect of the measure.

State aid rules

On the basis of the relevant exchange rate of 1 October 2013 as published in the Official Journal of the European Union ⁽¹³⁾, the reduced tax rate of SEK 50 per MWh envisaged by the Swedish authorities is above the EU minimum level of taxation pursuant to Article 10 of Directive 2003/96/EC. The measure thus fulfils one of the conditions laid down in Article 44 of Commission Regulation 651/2014/EU ⁽¹⁴⁾, which stipulates the conditions under which such a measure is exempted from the State aid notification requirements. However it cannot be established at this stage whether all the conditions set in Article 44 are fulfilled and the proposal for a Council Implementing Decision does not prevent the Commission from requiring from Sweden to comply with State aid rules.

⁽¹³⁾ Cf. note 2 above.

⁽¹⁴⁾ Commission Regulation 651/2014/EU 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.).

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

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.

3. 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 SEK 50 (EUR 5.79) per MWh 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.

4. BUDGETARY IMPLICATION

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 taxation on 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 Council Implementing Decision 2011/384/EU ⁽²⁾ Sweden was authorised to apply a reduced rate of taxation to electricity directly provided to vessels at berth in a port ('shore-side electricity') in accordance with Article 19 of Directive 2003/96/EC until 25 June 2014.
- (2) By letter of 13 December 2013, Sweden sought the authorisation to continue to apply a reduced rate of electricity tax to shore-side electricity pursuant to Article 19 of Directive 2003/96/EC.
- (3) With the tax reduction it intends to apply, Sweden aims at continuing the promotion of 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.
- (4) 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 reduce CO₂ emissions. The measure is therefore expected to contribute to the environmental, health and climate policy objectives of the Union.
- (5) Allowing Sweden to apply a reduced rate of electricity taxation to shore-side electricity does not go beyond what is necessary to increase the use of shore-side electricity, 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

⁽¹⁾ OJ L 283, 31.10.2003, p. 51.

⁽²⁾ Council Implementing Decision 2011/384/EU of 20 June 2011 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 (OJ L 176, 30.6.2011, p. 36).

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

- (6) 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 to allow for the proper evaluation of the measure, 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 six 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.
- (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 which could result from changes to the rate of excise duty levied on shore-side electricity, it should be ensured that Sweden can apply the existing specific tax reduction to which this Decision relates without interruption. The authorisation requested should therefore be granted with effect from 26 June 2014, following seamlessly on from the prior arrangements under Council Implementing Decision 2011/384/EU.
- (8) This decision is without prejudice to the application of the Union rules regarding State aid,

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 take effect on the day of its notification.

It shall apply from 26 June 2014.

It shall expire on 25 June 2020.

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*