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Proposal for a

COUNCIL IMPLEMENTING DECISION

**authorising the Netherlands to apply a reduced level of taxation to electricity supplied to
charging stations for electric vehicles**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

Taxation of energy products and electricity in the EU 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.

Article 15(1)(e) of the Directive allows Member States to apply a tax reduction or tax exemption to electricity used for the carriage of goods and passengers by rail, metro, tram and trolley bus. However there is no provision that allows for a tax reduction for electricity used for transportation by electric vehicles different from trolley buses.

The objective of this proposal is to allow the Netherlands to apply, reduced level of taxation to electricity, supplied to charging stations for electric vehicles. This reduction is meant to promote the use of cleaner modes of transportation, reduce local air pollution and the CO₂ emissions from transport.

The request and its general context

By letter dated 29 March 2016, in accordance with Article 19 of the Directive, the Dutch authorities informed the Commission that they intend to apply a reduced tax rate of EUR 49.96 per MWh to electricity supplied to charging stations for electric vehicles for the annual consumption of up to 10 MWh per charging station. The consumption over 10 up to 50 MWh would be taxed at the rate of EUR 49.96, the consumption over 50 up to 10 000 MWh would be taxed at a rate of EUR 13.31 and the annual consumption over 10 000 MWh would be taxed at a rate of EUR 0.53. For charging stations which are not covered by the tax rates for business use, the annual consumption over 10 000 MWh would be taxed at a rate of EUR 1.07. The overall tax rate will be above the minimum rate of taxation for electricity for business use as laid down in Directive 2003/96/EC. The national rate of taxation currently applicable to electricity used to charge electric vehicles for the initial 10 MWh of the annual consumption is EUR 100.70 per MWh² which is the national rate of taxation of electricity for business and non-business use for this consumption level. Currently the Netherlands applies differentiated national tax rates³ for electricity according to the quantity consumed in accordance with Article 5, of Directive 2003/96/EC.

Supplementary information was received from the Netherlands on 6 April, 20 June and 18 August 2016.

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).

² The level of taxation of electricity is the one applicable in January 2016 (cf. http://ec.europa.eu/taxation_customs/taxation/excise_duties/energy_products/rates/index_en.htm).

³ The Netherlands applies differentiated tax rates for electricity in line with Article 5 of Directive 2003/96/EC on the basis of quantitative consumption levels. According to information provided in July 2016, the national tax rates are as follows: EUR 100.70 per MWh for 0-10 MWh of electricity consumed annually, EUR 49.96 for quantities above 10 up to 50 MWh, EUR 13.31 for quantities above 50 up to 10 000 MWh. For consumption above 10 000 MWh the tax rates are EUR 0.53 for business use and EUR 1.07 for non-business use.

The Netherlands would apply the reduced rate of taxation on electricity to supplies of electricity to electric vehicles by dedicated public and private charging stations for electric vehicles. The charging station may consist of one or more charging points, each capable of charging one electric vehicle at a time. The charging station operators and the private or corporate entities entitled to apply the reduced rate will be obliged to submit a declaration to the electricity supplier stating that the grid connection is exclusively intended for the supply of electricity to electric vehicles. The request made by the Netherlands excludes from the provision charging stations where the charging takes place with exchange of batteries, which means that the reduced rate will not apply in such cases.

The overall rate of taxation, including the reduced rate for the initial 10 MWh of the annual consumption of each entity, would be well above the minimum level set in Annex I, Table C of Council Directive 2003/96/EC.

According to the Dutch authorities, in case the charging station operator intends to apply a reduced tax rate to electricity to his charging stations, he would be obliged to submit a declaration to the electricity supplier explaining which of his grid connections are exclusively intended for the supply of electricity to electric vehicles. The measure would apply only for the electricity supplied to the indicated connections for which the electricity supplier would apply the reduced rate. Furthermore the charging station operator is obliged to inform the electricity supplier in case his undertaking is an undertaking in difficulties in the sense that he encounters financial problems and is eligible for aid in line with the Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty (2014/C 249/01). In that case the supplier will no longer be allowed to apply the reduced energy tax rate on electricity.

The advantage derived from the rate in the energy tax will vary depending on the amount of megawatt hours. On basis of the information from the sector, the Netherlands estimates that on average 1.8 MWh is supplied per charging station. In that case the maximum advantage per charging station in 2016 is estimated at EUR 101 for the whole year. This advantage will grow if the standard energy tax rate increases.

The (theoretical) maximum total advantage in 2016 will be reached if more than 50 MWh of electricity is supplied to a charging station, but this is difficult to be achieved in reality.

Currently there are ten charging station operators in the Netherlands.

The measure is open to all EU operators without discrimination. The country of origin of the operator of the charging station is not a condition to benefit from the measure. A transportation company or a household having a charging station could also benefit from the measure provided they fulfil the conditions mentioned above.

Currently there is not a positive business incentive for public charging stations. This is an obstacle for the development of the public charging infrastructure and the use of electric cars. The measure aims to improve the business case of public charging stations, which should make the use of electric cars more attractive and improve the environment. A fast development of public charging infrastructure is of vital importance for the transition from vehicles with internal combustion engines running mostly on fossil fuels to electric vehicles. A well-developed infrastructure is necessary to make electric vehicles a feasible alternative to traditional road transport. This is important because of the environmental benefits of the transition to electric driving. Electric vehicles produce less CO₂-emissions⁴ and local air

⁴ Cf. Energy consumption, CO2 emissions and other considerations related to Battery Electric Vehicles, European Association for Battery Electric Vehicles (http://ec.europa.eu/transport/themes/strategies/consultations/doc/2009_03_27_future_of_transport/200

pollutants (PM10, NO_x) than fossil fuel vehicles. According to the Dutch authorities the electricity produced by coal will decrease from 29 % to 26 % from 2014 to 2020 while the electricity produced from renewables will increase from 11 % to 35 % from 2014 to 2020.

The charging station operator would have the option to pass (part of) the advantage of the measure on to their customers in the form of a reduction on the charging rates. In that case the cost of ownership of electric vehicles would be reduced due to lower costs for driving. This will create an incentive for consumers to choose a new electric car over a new fossil fuel car. Another positive effect of the lower charging rates is that the owners of plug-in hybrid vehicles that can run on electricity as well as on fossil fuel will be encouraged to use electric energy rather than fossil fuel for transportation.

Arguments of the Netherlands concerning the period of application of the measure

In principle, the period of application of the derogation should be long enough in order to provide legal certainty to electricity operators, private or corporate entities. The Netherlands has asked for four years compared to the maximum possible six years. Under these circumstances, it appears appropriate to grant the authorisation requested for period of four years as requested by the Netherlands and allowed by the Directive.

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.

According to the Dutch authorities the national measure in question fulfils this requirement. It follows from the intention of the Netherlands to reduce the emissions of greenhouse gases and air pollutants from vehicles and support the EU climate change objective to reduce CO₂ emissions and increase the share of renewables in the final energy consumption in the transport sector. It is considered that the possibility of tax reduction to electricity supplied to electric vehicles would offer to consumers additional incentive to use cleaner energy and improve the environment.

• Consistency with existing policy provisions in the policy area

According to Article 19(1), third subparagraph, of the Directive, each request shall be examined taking into account, inter alia, the proper functioning of the internal market, the need to ensure fair competition and EU health, environment, energy and transport policies.

The general mechanics of the measure as described will not create any obstacles to intra-EU trade. The measure is open to all EU operators without discrimination. The country of origin of the operator of the charging station is not a condition for applying the measure. The derogation would not lead to any problem with the functioning of the internal market and would not counteract the achievement of the EU's policy objectives especially in the fields of energy, climate change and environment.

[90408_eabev_%28scientific_study%29.pdf](#)). The share of electricity from renewable sources in the Netherlands is around 10 % of the total electricity consumption (see the Dutch authorities' 2015 Progress report on Energy from renewable sources in the Netherlands 2013–2014, Directive 2009/28/EC).

- **Consistency with other Union policies**

The implementation of this measure will contribute to the reduction of the emissions from vehicles and support the EU's long term climate goals of reducing CO₂ emissions. According to estimations provided by the Dutch authorities the expected electricity mix in the Netherlands from renewable source will be around 35 % in 2020 and will reach 41 % by 2030. According to the Netherlands the electricity used in public charging infrastructure almost exclusively originates from renewable energy. A study⁵ carried in the Netherlands shows that, this may lead to 70 % reduction in the CO₂ emissions, which is fully in line with Directive 2009/28/EC on the promotion of the use of energy from renewable sources.

This initiative is fully in line with Directive 2014/94/EU⁶ on the deployment of alternative fuels infrastructure. This directive requires Member States to develop national policy frameworks for the market development of alternative fuels and their infrastructure, in particular in urban/suburban and other densely populated areas. The Directive obliges Member States to install an appropriate number of publicly accessible charging stations by the end of 2020.

Apart from the greenhouse gas emissions reductions, more widespread use of electric cars will significantly help in improving air quality. Urban pollution hot-spots are one the biggest challenges and emissions from transport are the main contributor to pollution (especially to NO₂ exceedance) in this regard.

The Dutch authorities acknowledge that the measure constitutes State aid in favour of grid operators supplying electricity to electric vehicles, which may qualify as block exempted aid under Article 44 of the Commission Regulation 651/2014/EU⁷.

Provided that the measure respects the conditions laid down in Article 44 of the General Block Exemption Regulation (Regulation 651/2014/EU) as well as the general conditions laid down therein, the measure falls within the scope of application of that Regulation and is by consequence exempt from the prior notification requirement.

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 TFEU is not in itself within the exclusive competence of the EU within the meaning of Article 3 TFEU.

However, pursuant to Article 19 of Directive 2003/96/EC, the Council has been granted an exclusive competence, as a matter of secondary law, to authorise a Member State to introduce further exemptions or reductions within the meaning of that provision. Member States cannot therefore substitute themselves for the Council. As a result, the principle of subsidiarity is not applicable to the present implementing decision. In any event, since this act is not a draft

⁵ TNO 'Energie- en milieu-aspecten van elektrische personenvoertuigen', (7 April 2015), pp. 11 – 15.

⁶ 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).

⁷ 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, pp. 1–78).

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.

The proposal therefore respects the principle of subsidiarity.

- **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**

Instrument proposed: Council Implementing Decision.

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 impact on prices is limited, the impact on human health and the environment is positive as the measure aims at lowering the use of fossil fuels and promote cleaner energy in transport.

- **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 and administrative burden on the EU. The proposal therefore has no impact on the EU budget.

5. OTHER ELEMENTS

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

Article 1 - The Netherlands will be allowed to reduce the rate for electricity supplied to electric vehicles charging stations providing electricity to electric vehicles for a period of four years.

The level of taxation after reductions can never be lower than the EU minima set in Directive 2003/96/EC and the reduction would apply to electricity used both by private and business cars.

The national measure provided by this decision is part of a policy designed by the Netherlands to decrease the CO₂ emissions, improve air quality, increase the share of renewables in transport and contribute to the EU's climate change objective. The measure will provide for incentives for the consumers to switch to cleaner energy in transport.

Article 2 – This article provides for definitions of 'electric vehicles' which is not present in Directive 2003/96/EC and which is in line with existing EU legislation. The definition provides clarity about the scope of application of the measure.

Article 3 – The authorisation requested is granted with effect from 1 January 2017 for a period of four years, as requested by the Netherlands.

Proposal for a

COUNCIL IMPLEMENTING DECISION

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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 electricity⁸, and in particular Article 19 thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) On 29 March 2016 and in accordance with Article 19(1) of Directive 2003/96/EC, the Netherlands sought authorisation to apply a reduced rate of taxation on electricity supplied to electric vehicles. At the Commission's request, the Netherlands provided additional information on 6 April 2016, 20 June and 18 August.
- (2) The reduced rate of taxation aims at promoting the use of electric vehicles by reducing the costs for the electricity used to propel those vehicles.
- (3) The use of electric vehicles avoids emissions of air pollutants originating from the combustion of petrol and diesel or other fossil fuels and therefore contributes to an improvement of air quality in cities. The use of electric vehicles can furthermore reduce CO₂ emissions where the electricity used is produced from renewable energy sources. The measure is therefore expected to contribute to the environmental, health and climate policy objectives of the Union.
- (4) The Netherlands requested explicitly that the reduced rate of taxation be applied to electricity supplied to electric vehicles for both business and non-business use and that charging stations that are not accessible to the public would also be covered.
- (5) The Netherlands asked for the reduced rate of taxation on electricity to apply only to charging stations where the electricity is used to charge an electric vehicle directly and not to apply to electricity that is provided through the exchange of batteries.
- (6) A reduced rate of taxation on electricity supplied to electric vehicles via charging stations will improve the business case of publicly accessible charging stations in the Netherlands, which should make the use of electric cars more attractive and result in improvements of air quality.
- (7) Considering the limited number of electric vehicles and the fact that the level of taxation on electricity supplied to electric vehicles via charging stations will be above the minimum level of taxation for business use laid down in Article 10 of Directive 2003/96/EC, the measure is unlikely to lead to distortions in competition

⁸ OJ L OJ L 283, 31.10.2003, p. 51.

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

- (8) The level of taxation on electricity supplied to electric vehicles via charging stations that are not for business use will be above the minimum level of taxation for non-business use laid down in Article 10 Of Directive 2003/96/EC.
- (9) According to Article 19(2) of Directive 2003/96/EC, each authorisation granted under Article 19(1) of that Directive must be strictly limited in time. The Netherlands requested that the authorisation is granted for four years to ensure that the authorisation period is sufficiently long so as not to discourage economic operators from making the necessary investments. This decision is without prejudice to the application of the Union rules regarding State aid,

HAS ADOPTED THIS DECISION:

Article 1

The Netherlands is authorised to apply a reduced rate of taxation on electricity supplied to charging stations directly used for charging electric vehicles, excluding charging stations for exchange of batteries for electric vehicles, provided that the minimum levels of taxation laid down in Article 10 of Directive 2003/96/EC are respected.

Article 2

For the purpose of this Decision, the definition of 'electric vehicle' laid down in Article 2 of Directive 2014/94/EU of the European Parliament and of the Council⁹ shall apply.

Article 3

This Decision shall be applicable from 1 January 2017 until 31 December 2020.

Article 4

This Decision is addressed to the Kingdom of the Netherlands.

Done at Brussels,

For the Council
The President

⁹ 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, p. 1).