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Proposal for a

COUNCIL IMPLEMENTING DECISION

authorising Croatia to apply a tax exemption to gas oil used to operate machinery in humanitarian demining 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.

By virtue of Council Implementing Decision 2014/921/EU of 16 December 2014[2], Croatia has already been authorised to apply a tax exemption to gas oil used to operate machinery in humanitarian demining in accordance with Article 19 of Directive 2003/96/EC.

The objective of this proposal is to extend that authorisation as requested by Croatia, given that the current derogation expired on 19 December 2020. This exemption is meant to reduce the costs for legal persons registered to conduct demining activities and thus speed up these activities and contribute to the implementation of humanitarian demining policy in Croatia.

The demining activities are taking place in accordance with the international Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction (Ottawa Convention) of 1998, and the international Convention on Cluster Munitions signed in Oslo in 2018, which prohibits all use, production, transfer and stockpiling of cluster munitions and establishes a framework for cooperation and assistance to ensure clearance of contaminated areas, as well as the Croatian Mine Action Act (OG 110/15, 118/18 and 98/19).

In accordance with Article 5 of the Ottawa Convention, in 2018 the Republic of Croatia submitted a second Request for extension of the demining deadline. The request was granted at the Seventeenth Meeting of the States Parties of the Convention and a new deadline of 1 March 2026 is now set for the completion of the demining activities.

In line with the extension of the deming deadline and by letter dated 18 September 2020, the Croatian authorities informed the Commission of their intention to prolong the tax exemption to gas oil used to operate machinery in humanitarian demining until 19 December 2026. Additional information was provided by letters dated 13 October 2020 and 6 November 2020.

The intention of the Croatian authorities is to continue to apply a tax exemption to gas oil used to operate machinery in humanitarian demining in accordance with Article 19 of Directive 2003/96/EC.

The requested period of validity of the derogation is from 19 December 2020 until 19 December 2026, which is in continuity with the current derogation and within the maximum period allowed by Article 19 of the Energy Taxation Directive.

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[1] OJ L 283, 31.10.2003, p. 51–70.

[2] OJ L 363, 18.12.2014, p. 50–51.

The aim of of the measure to be applied by Croatia is to give an incentive for quicker clearance of suspected minefields, freeing-up of agricultural land and forests thus making them accessible again for economic activities. The measure is also expected to have immediate positive effects on human life and health in the areas contaminated by mines and unexploded ordnance.

The measure consists of a tax exemption from excise duty on gas oil used to operate machinery in humanitarian demining of areas contaminated with mines, in such a way that the exemption is provided only to legal entities registered for demining. The measure is implemented through the application of excise duty refunds. Machines that will use gas oil exempted from payment of excise duties will be classified according to their purpose, their working tools and their method of operation. The competent Croatian Mine Action Centre departments will oversee and keep records of the operation of the machinery. There will be a special form for each machine in which hours of operation, performance and fuel consumption will be recorded for each day. When a project has ended, the demining operator will submit an excise tax return form for its machinery employed on the site, accompanied by a log form for each machine. In line with its general responsibility to monitor the implementation of excise legislation, the Tax Administration of the Ministry of Finance will perform, on the basis of information about the site where demining activity is taking place, systematic checks of fuel used in demining machinery.

According to the figures provided by the Croatian authorities, in Croatia there are 44 authorized legal entities with 43 machines used in humanitarian demining. However, the measure is not meant to be restricted only to these accredited operators but will apply to any new accredited operator and demining machinery that may be used for this purpose, in the future. The Croatian Mine Action Centre accredits and keeps a record of all new mine clearance machines intended to be used for humanitarian demining.

Without the application of the measure operators of demining equipment authorised to perform demining operations in the territory of Croatia will have to pay the national excise duty rate on gas oil used as motor fuel which stands at HRK 3060 per 100 litres (approximately EUR 404 based on the exchange rate of 1 EUR = 7.5630 HRK on 1 October 2020) and which applies to propellant use as well as uses in stationary motors, heavy machinery and in vehicles intended for use off the public roadway (Article 8(2)(b), (c) and (d) of the Energy Taxation Directive). The time-limited tax exemption would allow operators to reduce their costs for the demining activities for a limited period of time, thus creating an incentive for intensifying their work for the period of application of the measure. This will speed up the process of demining. Beneficiaries of the measure are legal entities who have been issued permit of the Ministry of the Interior for demining operations in accordance with the Mine Action Act (OG 110/15, 118/18 and 98/19) and have machines accredited in accordance with the Ordinance on technical requirements and conformity assessment of machines used in humanitarian demining operations (OG 53/07, 39/11 and 57/13).

Croatia requested the authorisation to be granted until 19 December 2026, starting from 19 December 2020, without interruption with the current derogation and within the maximum period indicated in Article 19(2) of the Directive.

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

Taxation of gas oil used for industrial and commercial purposes is governed by Directive 2003/96/EC, in particular Article 8. Articles 5, 15 and 17 provide for the possibility for Member States to apply tax differentiations, including exemptions and reductions, to certain

uses of gas oil. However, as such, these provisions do not provide for a tax exemption to gas oil used to operate machinery in humanitarian demining.

Provisions under the Energy Taxation Directive

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

Article 19(1), first subparagraph, of the Directive reads as follows:

In addition to the provisions set out in the previous Articles, in particular in Articles 5, 15 and 17, the Council, acting unanimously on a proposal from the Commission, may authorise any Member State to introduce further exemptions or reductions for specific policy considerations.

The possibility to introduce a favourable tax treatment to gas oil used to operate machinery in humanitarian demining 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.

Croatia has requested that the measure should apply for 6 years, the maximum period allowed by Article 19(2). This period is in line with the international commitments of Croatia to complete the deming operations.

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. This review follows the evaluation of the Energy Taxation Directive[3] and the Council Conclusions on the EU energy taxation framework from 28 November 2019[4]. 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; and called on the Commission to give particular consideration to the scope of the Directive, minimum rates and 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 19 December 2026.

State aid rules

The Croatian authorities envisage to apply tax exemption to gas oil used to operate machinery in humanitarian demining by refunding all the excise duty to every registered operator involved in the demining activities. The Croatian authorities argue that the measure does not consitute state aid. This proposal is without prejudice to any assessment of the measure under State aid rules. Moreover, the proposal for a Council implementing decision does not prejudge the Member State's obligation to ensure compliance with State aid rules.

[3] SWD(2019) 329 final.

[4] Council conclusions of 28 November 2019, 14608/19, FISC 458.

- **Consistency with other Union policies**

Health and Environment policy

The requested measure concerns mainly the EU's health and environment policy to the extent that it will help achieve quicker reduction of the mine-contaminated areas of the Republic of Croatia which present a threat to the life and health of humans, domesticated animals and wildlife. The objectives to be achieved with this measure are regional and sectoral in nature, as the areas to be demined are spread over different regions of the Republic of Croatia, and the sectors affected by the measure are agriculture and forestry. The application of the measure has direct positive effects on the protection of human life and health in areas contaminated with mines and unexploded ordnance.

Transport policy

The measure is limited to gas oil used in accredited special-purpose machines designed and built specifically for clearing mined areas and that it is also limited to mine-contaminated areas of the Republic of Croatia. It should also be mentioned that these machines cannot be used for any kind of transportation on public roads.

Internal market and fair competition

Under the circumstances described, the measure also appears acceptable in view of the proper functioning of the internal market and the need to ensure fair competition. In particular, due to the fact will not favour certain enterprises over others since it will apply to all enterprises involved in humanitarian demining in Croatia. Similarly, the measure will not affect intra-EU trade given its specific nature and that it is limited to mine-contaminated areas of the Republic of Croatia.

It can thus be concluded that the measure is compatible with the health, environment, transport and competition policies of the Union.

The timeframe for which it is proposed to prolong the authorization to apply a tax exemption, makes it unlikely that the analysis conducted in the preceding paragraphs will change before the date of expiry of the measure.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

Article 19 of Council Directive 2003/96/EC.

- **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 exemption 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 Croatia 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.

There are 295.9 km^2 of mine suspected areas left in the Republic of Croatia, which concern 50 cities and municipalities in 8 counties. In these areas any entry and movement is prohibited.

Current demining operations are performed by 617 deminers, site managers and support staff employed by 44 authorized legal entities for demining operations. Demining operations are performed using 43 specially designed demining machines.

The information provided by Croatia suggests that the measure will have a limited impact on tax revenues. The Croatian authorities estimate that the total tax expenditure from the measure will amount HRK 3.199.475 (approximately EUR 423.043) for the total 6 year duration of the measure.

Croatia expects the measure to have a positive impact on the succesful and timely completion of the deming operations through the reduction of the operating costs of the economic operators engaged in the demining activities.

- **Regulatory fitness and simplification**

The measure does not provide for a simplification. It is the result of the request made by Croatia 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 exemption for an individual Member State upon its own request. It is provided for a limited period until 19 December 2026. 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 Croatia will be allowed to apply a a tax exemption to gas oil used to operate machinery in humanitarian demining in accordance with Article 19 of Directive 2003/96/EC.

Under Article 2 the authorisation is granted with effect from 19 December 2020, in continuity with the current Council Implementing Decision 2014/921/EU, until 19 December 2026, the maximum period of 6 years allowed by the Directive, as requested by Croatia.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity[1], and in particular Article 19 thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) By Council Implementing Decision 2014/921/EU[2] Croatia was authorised to apply a tax exemption to gas oil used to operate machinery in humanitarian demining in accordance with Article 19 of Directive 2003/96/EC until 19 December 2020.

(2) On 18 September 2020, Croatia sought authorisation to continue to apply a tax exemption to gas oil used to operate machinery in humanitarian demining for the period from 19 December 2020 until 19 December 2026. At the request of the Commission, Croatia provided additional information in support of its application on 13 October 2020, and on 6 November 2020.

(3) With the tax exemption it intends to apply, Croatia aims at speeding up the demining of the remaining mine contaminated areas in various regions. The measure would have immediate positive effects on human life and health in those regions.

(4) The measure should be limited to accredited special-purpose machines designed and built specifically for clearing mined areas.

(5) The measure should be limited to mine-contaminated areas in the territory of Croatia.

(6) The measure should apply to all operators involved in humanitarian demining in Croatia, thus no economic advantage will be given to any particular operator involved.

(7) Consequently, the measure is acceptable from the point of view of the proper functioning of the internal market and of the need to ensure fair competition and it is compatible with the Union's health, environment, energy and transport policies.

(8) Each authorisation granted under Article 19(1) of Directive 2003/96/EC is to be strictly limited in time. In order to provide economic operators concerned with a sufficient degree of certainty and enough time to conclude the process of demining of

[1] OJ L 283, 31.10.2003, p. 51.

[2] Council Implementing Decision 2014/921/EU of 16 December 2014 authorising Croatia to apply a tax exemption to gas oil used to operate machinery in humanitarian demining in accordance with Article 19 of Directive 2003/96/EC (OJ L 363, 18.12.2014, p. 150).

the contaminated areas, it is appropriate to grant the authorisation for a period of six years.

(9) In order to provide legal certainty to economic operators involved in demining operations and to avoid a potential increase in the administrative burden resulting from changes to the applicable tax rate, Croatia should be able to apply the tax exemption to gas oil used to operate machinery in humanitarian demining without interruption. The authorisation requested should therefore be granted with effect from 19 December 2020, in order to follow seamlessly on from the prior arrangements under Implementing Decision 2014/921/EU.

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

HAS ADOPTED THIS DECISION:

Article 1

Croatia is authorised to exempt from taxation gas oil used to operate machinery in humanitarian demining in its territory. The measure shall be limited to accredited special-purpose machines designed and built specifically for clearing mined areas.

Article 2

This Decision shall apply from 19 December 2020 until 19 December 2026.

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 humaniterian demining, this Decision shall cease to apply on the day on which those general rules become applicable.

Article 3

This Decision is addressed to Croatia.

Done at Brussels,

For the Council
The President