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Proposal for a

COUNCIL IMPLEMENTING DECISION

authorising the Netherlands to apply a reduced rate of taxation to electricity supplied to [charging stations for] electric vehicles 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.

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.

By virtue of Council Implementing Decision (EU) 2016/2266[2], the Netherlands has already been authorised to apply a reduced level of taxation to electricity supplied to charging stations for electric vehicles until 31 December 2020.

The objective of this proposal is to allow the Netherlands to continue to apply a reduced level of taxation to electricity, supplied to charging stations for electric vehicles, as requested, starting from 1 January 2021 and until 1 January 2025. This reduction is meant to continue to promote the use of cleaner modes of transportation, as well as to reduce local air pollution and the CO2 emissions from transport.

By letter dated 30 March 2020 and subsequent correspondence, 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 51.64 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 51.64, the consumption over 50 up to 10 000 MWh would be taxed at a rate of EUR 13.75 and the annual consumption over 10 000 MWh would be taxed at a rate of EUR 0.56. 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 1.13. 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 would be EUR 94.28 per MWh, 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 rates for electricity according to the quantity consumed in accordance with Article 5, of Directive 2003/96/EC[3].

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1 OJ L 283, 31.10.2003, p. 51–70.

2 OJ L 342, 16.12.2016, p. 30–31.

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 the last information provided, the national tax rates are as follows: EUR 94.28 per MWh for 0-10 MWh of electricity consumed

Supplementary information was received from the Netherlands on 20 November 2020.

The Netherlands would continue to apply the reduced rate of taxation to electricity supplied to electric vehicles by dedicated public and, in some cases, private or corporate charging stations for electric vehicles. These charging stations have normally a direct connection to the grid. 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 reduction charging stations where the charging takes place with exchange of batteries.

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 for its charging stations, it would be obliged to submit a declaration to the electricity supplier explaining which of the grid connections are exclusively intended for the supply of electricity to electric vehicles. The measure would apply only for the electricity supplied to the designated connections. Furthermore, the charging station operator is obliged to inform the electricity supplier in case it has 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 reduced tax will vary depending on the amount of kilowatt-hours. As highlighted by the Dutch authorities, based on a study commissioned at national level, on average a supply of 3 900 kWh is estimated per charging station in 2020. In that case, the maximum advantage per charging station in 2020 is estimated at EUR 289 per year. This advantage will grow if the standard energy tax increases. Moreover, a charging station can in practice supply 12 000 kWh per year. This leads to an expected maximum total advantage of EUR 815 in 2020. The number of charging stations per beneficiary varies.

As reported by the Dutch authorities, currently there are around 40 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.

As highlighted in the request, a study commissioned by the Dutch ministry of transportation has showed that currently, in many cases, there is still 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 at continuing to improve the business case for public charging stations, which should make the use of electric cars more attractive and improve the environment. A fast development of public charging infrastructure

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annually, EUR 51.64 for quantities above 10 up to 50 MWh, EUR 13.75 for quantities above 50 up to 10 000 MWh. For consumption above 10 000 MWh the tax rates are EUR 0.56 for business use and EUR 1.13 for non-business use. As specified by the Dutch authorities, the rates in the energy tax are subject to a yearly adjustment based on the inflation rates.

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 generally produce less CO2-emissions and local air pollutants (PM10, NOx) than fossil fuel vehicles[4]. According to the Dutch authorities, in 2019 the percentage of electricity produced by coal was 14%. It is projected that in 2030 that percentage will be 0%. In 2019, the electricity mix in the Netherlands from renewable sources was 18% in 2019 and it is expected to be 58% in 2025 and 75% in 2030.

The request highlights that 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.

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

- **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 application of the tax reduction 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 -but rather support- the achievement of the EU's policy objectives especially in the fields of energy, transport, climate change and environment.

Provisions under the Energy Taxation Directive

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

In addition to the provisions set out in the previous Articles, in particular in Articles 5, 15 and 17, the Council, acting unanimously on a proposal from the Commission, may authorise any 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 continue to support the EU climate change objective to

[4] https://ec.europa.eu/transport/themes/urban/vehicles/road/electric_en

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 a tax reduction to electricity supplied to electric vehicles would offer consumers additional incentive to use cleaner energy and improve the environment.

State aid rules

The Dutch authorities acknowledge that the measure constitutes State aid in favour of operators of charging stations for electric vehicles, which may qualify as block exempted aid under Article 44 of the Commission Regulation 651/2014/EU[5].

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.

- **Consistency with other Union policies**

Environment and climate change policy

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. As per estimations provided by the Dutch authorities, the expected electricity mix in the Netherlands from renewable source will be around 58 % in 2025 and will reach 75 % in 2030. According to the Netherlands, the electricity used in public charging infrastructure almost exclusively originates from renewable energy. A study[6] 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[7]. As highlighted in the request, it can also help the Netherlands meet their 2020 10% target for energy from renewable sources in transport set by that Directive.

Apart from the greenhouse gas emissions reductions, the request highlights that a more widespread use of electric cars will significantly help in improving air quality: urban pollution hot-spots are one of the biggest challenges and emissions from transport are the main contributor to pollution (especially to NO2 exceedance) in this regard. Moreover, even when the electricity is not fully produced from renewable energy sources, most of the benefits would remain as the emissions stemming from generation are located far from the air quality hot-spots and the emission sources -power plants- would be more amenable to pollution control.

Energy policy

As reported by the Dutch authorities, a study commissioned at national level has shown that currently in many cases there is not yet a positive business case for public charging stations. This is an obstacle for the deployment of public charging infrastructure and the use of electric cars.

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5 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).

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

7 OJ L 140, 5.6.2009, p. 16–62

Therefore, the declared aim of the measure is 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 rollout of public charging infrastructure is of vital importance for the transition from fossil fuel vehicles to electric vehicles. A good infrastructure is necessary to make electric vehicles a realistic alternative to fossil fuel vehicles. This is important because of the environmental benefits of the transition to electric driving. Electric vehicles have generally both lower CO2-emissions and lower air polluting emissions (PM10, NOx) than fossil fuel vehicles.

As highlighted in the request, the charging station operator also has 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 will be reduced, which again has a positive influence on the choice of purchasing a new electric car instead of a new fossil fuel car. Another positive effect of lower charging rates is that the owners of plug-in hybrid vehicles that can run as well on electricity as fossil fuel will be encouraged to choose to use electric energy rather than fossil fuel.

Transport policy

The initiative is fully in line with Directive 2014/94/EU[8] 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.

Moreover, the EU transport system needs to decarbonise and modernise to reduce its emissions by 90% in 2050. Electric mobility is key, and will accelerate decarbonisation and reduce pollution, especially in cities, and new mobility services will increase the efficiency of the transport system and reduce congestion[9].

Internal market and fair competition

From the point of view of the internal market and fair competition, 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.

In the present case, a significant distortion of the above-mentioned kind can all the less be expected since the Netherlands will respect the minimum level of taxation prescribed by Directive 2003/96/EC for electricity.

The timeframe for which it is proposed the authorization to apply a reduced tax rate, unless there will be significant changes in the current framework and situation, makes it unlikely that the analysis conducted in the preceding paragraphs will change before the date of expiry of the measure.

[8] Directive 2014/94/EU of the European Parliament and of the Council of 22 October 2014 on the deployment of alternative fuels infrastructure (OJ L 307, 28.10.2014, pp. 1–20).

[9] Strategy for Energy System Integration (COM(2020) 299 final, July 2020).

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

Article 19 of Council Directive 2003/96/EC.

• Subsidiarity (for non-exclusive competence)

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

However, pursuant to Article 19 of Directive 2003/96/EC, the Council has been granted an exclusive competence, as a matter of secondary law, to authorise a Member State to introduce further exemptions or reductions within the meaning of that provision. Member States cannot therefore substitute themselves for the Council. As a result, the principle of subsidiarity is not applicable to the present implementing decision. In any event, since this act is not a draft legislative act, it should not be transmitted to national Parliaments pursuant to Protocol No 2 to the Treaties for review of compliance with the subsidiarity principle.

• Proportionality

The proposal respects the principle of proportionality. The tax reduction does not exceed what is necessary to attain the objective in question.

• Choice of the instrument

The instrument proposed is a Council implementing decision. Article 19 of Directive 2003/96/EC makes provision for this type of measure only.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

• Ex-post evaluations/fitness checks of existing legislation

The measure does not require the evaluation of existing legislation.

• Stakeholder consultations

This proposal is based on a request made by the Netherlands and concerns only this Member State.

• Collection and use of expertise

There was no need for external expertise.

• Impact assessment

This proposal concerns an authorisation for an individual Member State upon its own request and does not require an impact assessment. The 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.

Moreover, the information provided by the Netherlands suggests that the measure will have a relatively limited impact on tax revenues[10] and the tax rate for electricity will still be above

[10] The Dutch estimation of the annual budgetary expenditure is € 4.2 million for 2021, € 5.3 million for 2022, € 6.2 million for 2023 and € 7 million for 2024.

the minimum level of taxation set in Directive 2003/96/EC. The Netherlands expects the measure to have a positive impact on the achievement of its environmental goals and in particular on the reduction of emissions and improvement of local air quality.

- **Regulatory fitness and simplification**

The measure does not provide for a simplification. It is the result of the request made by the Netherlands and concerns only this Member State.

- **Fundamental rights**

The measure has no bearing on fundamental rights.

4. BUDGETARY IMPLICATIONS

The measure does not impose any financial or administrative burden on the Union. The proposal therefore has no impact on the budget of the Union.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

An implementation plan is not necessary. This proposal concerns an authorisation for a tax reduction for an individual Member State upon its own request. It is provided for a limited period, until 1 January 2025. The tax rate that will apply will be above the minimum level of taxation set by the Energy Taxation Directive. The measure can be evaluated in case of a request for a renewal after the validity period has expired.

- **Explanatory documents (for directives)**

The proposal does not require explanatory documents on the transposition.

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

Article 1 provides the definition of 'electric vehicles', which is taken from Article 2 of Directive 2014/94/EU. The definition provides clarity about the scope of application of the measure.

Under Article 2, the Netherlands will be allowed to apply a reduced rate of taxation to electricity supplied to charging stations directly used for charging electric vehicle.

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 to consumers to switch to cleaner energy in transport.

Article 3 specifies that the authorisation requested is granted with effect from 1 January 2021 for a period of four years, as requested by the Netherlands.

It also clarifies that if the Council provides for general rules on tax advantages for electricity for electric vehicles, the Decision shall cease to apply on the day on which those general rules become applicable.

Article 4 stipulates that the decision is addressed to the Netherlands.

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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 (EU) 2016/2266[2], the Netherlands was authorised to apply a reduced rate of taxation to electricity supplied to charging stations directly used for charging electric vehicles until 31 December 2020, in accordance with Article 19 of Directive 2003/96/EC.

(2) On 30 March 2020, the Netherlands sought authorisation to continue to apply a reduced rate of taxation to electricity supplied to electric vehicles for the period from 1 January 2021 to 1 January 2025. At the request of the Commission, the Netherlands provided additional information in support of its application on 20 November 2020.

(3) The reduced rate of taxation aims at further promoting the use of electric vehicles by reducing the costs for the electricity used to propel those vehicles.

(4) 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 CO_2 emissions, particularly where the electricity used is produced from renewable energy sources. A reduced rate of taxation to electricity supplied to electric vehicles is therefore expected to contribute to the environmental, health and climate policy objectives of the Union.

(5) The Netherlands highlighted that the reduced rate of taxation would apply to the supply of electricity to charging stations for electric vehicles with a direct connection to the electric grid, including public charging stations and some private or corporate charging stations.

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

[2] Council Implementing Decision (EU) 2016/2266 of 6 December 2016 authorising the Netherlands to apply a reduced rate of taxation to electricity supplied to charging stations for electric vehicles (OJ L 342, 16.12.2016, p. 30).

(6) 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.

(7) A reduced rate of taxation on electricity supplied to electric vehicles via charging stations will improve the business case for publicly accessible charging stations in the Netherlands, which will make the use of electric cars more attractive and result in an improvement of air quality.

(8) Considering the relatively limited number of electric vehicles and the fact that the level of taxation on electricity supplied to electric vehicles via charging stations that are for business use will be above the minimum level of taxation laid down in Article 10 of Directive 2003/96/EC, the reduced taxation rate is unlikely to lead to distortions in competition during the period for which the authorisation is requested and will thus not negatively affect the proper functioning of the internal market.

(9) 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.

(10) Each authorisation granted under Article 19(1) of Directive 2003/96/EC is to be strictly limited in time. In order to ensure that the authorisation period is sufficiently long so as not to discourage relevant economic operators from making the necessary investments, it is appropriate to grant the authorisation for the requested period. However, the authorisation should cease to apply from the date of application of any general provisions on tax advantages for electricity supplied to electric vehicles adopted by the Council under Article 113 or any other relevant provision of the Treaty on the Functioning of the European Union, should such provisions become applicable prior to 1 January 2025.

(11) In order to avoid a potential increase in the administrative burden for distributors and redistributors of electricity resulting from changes to the applicable tax rates, the Netherlands should be able to apply the reduced rate of taxation to electricity supplied to electric vehicles without interruption. The authorisation requested should therefore be granted with effect from 1 January 2021, in order to follow seamlessly on from the prior arrangements under Implementing Decision (EU) 2016/2266.

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

HAS ADOPTED THIS DECISION:

Article 1

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 Council[3] shall apply.

Article 2

The Netherlands is authorised to apply a reduced rate of taxation to electricity supplied to charging stations directly used for charging electric vehicles, excluding charging stations for

[3] 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).

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 3

This Decision shall apply from 1 January 2021 until 1 January 2025.

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 electricity supplied to electric vehicles, this Decision shall cease to apply on the day on which those general rules become applicable.

Article 4

This Decision is addressed to the Kingdom of the Netherlands.

Done at Brussels,

For the Council
The President