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Proposal for a

COUNCIL IMPLEMENTING DECISION

authorising Croatia to apply 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

Taxation of energy products and electricity in the Union is governed by Council Directive 2003/96/EC ⁽¹⁾ (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 Croatia to apply tax exemption to gas oil used to operate specialised machinery in humanitarian demining. 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 tax reduction will expedite the demining activities which 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 (the Ottawa Treaty, 1998), the international Convention on Cluster Munitions signed in Oslo in 2008, which prohibits the use, transfer, stockpiling and destruction of stockpiled cluster munitions within a period of eight years, and the 2005 Humanitarian Demining Act of the Republic of Croatia.

The aim 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.

Without the application of the measure operators of demining equipment authorised to perform demining operations on the territory of Croatia will have to pay the national excise duty rate on gas oil used as motor fuel which stands at HRK 2 860 (app. EUR 375.54) ⁽²⁾ 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 and increase their profit margins 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.

The request and its general context

By letter dated 8 April 2014, the Croatian authorities requested an authorisation decision which will allow 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. Additional information and clarifications were provided by the Croatian authorities on 15 July 2014.

The intention of the Croatian authorities is to apply a tax exemption to gas oil used to operate machinery in humanitarian demining. The measure will be implemented by applying a system of refund of excise duties paid, in order to speed up the demining of the remaining contaminated areas. Machines that will use gas oil exempted from payment of excise duties

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

⁽²⁾ All calculations are based on the exchange rate on 1 October 2013, i.e. HRK 7.6153 for EUR 1. Cf. OJ C 286, 2.10.2013.

will be classified according to their purpose, their working tools and their method of operation.

According to the information provided by the Croatian authorities as at 1 January 2014, the total suspected mined areas and areas contaminated solely by unexploded ordnance in Croatia covered 613.6 km². Croatia estimates that the unused production potential of the mine-contaminated forest areas represents an annual loss of some EUR 30 million. 55 % of the contaminated agricultural areas constitute arable land while the rest are meadows and pastures. It is estimated that 900 000 people (approximately 20 % of the population) still live in immediate proximity to suspected mined areas. Between 1991 and 2013, there were 1 353 mine-related incidents and accidents in mine-contaminated areas, affecting 1 976 people and causing 510 deaths.

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

Scope

The beneficiaries of the measure will be legal persons who will be authorised by the Croatian Mine Action Centre and who will be registered to engage in humanitarian demining in accordance with the Humanitarian Demining Act⁽³⁾, the Rules on the conduct of humanitarian demining⁽⁴⁾ and the Rules on the technical requirements for determining the conformity of machinery used in humanitarian demining⁽⁵⁾. The beneficiaries will carry out demining and land clearance using demining machinery and create the conditions for pyrotechnicians to deactivate unexploded mines. The accredited machines will be defined according to their type, purpose and fuel consumption, which will depend in turn on the depth of clearance, the speed of the machine, the density of clearance and the effect of the machine on tracks with compacted local soil. The measure will be granted by refunding the excise duty paid, by collecting invoices paid for such use. These records will contain purchasers' details, machine serial numbers, the number of machine operating hours, the quantity of gas oil purchased and the date of purchase.

According to the figures provided by the Croatian authorities, in Croatia there are 36 registered legal persons with 47 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.

According to the Croatian Authorities the amount of the advantage per beneficiary brought by the measure will depend on the size of the area to be demined by the demining machinery and on the total consumption of gas oil used to operate the machinery when demining such area. Croatia estimates that the amount of the benefit resulting from the tax reduction calculated on the basis of average fuel consumption figures for all operators involved in demining in 2013 is approximately HRK 2 907 038 (app. EUR 381 736.50), which means that the average amount per machine is estimated at HRK 61 859.15 or EUR 8 123.01 per annum. The Croatian authorities anticipate that for the six years that the measure will apply, the annual budgetary expenditure based on the estimated average consumption will increase and they will be: HRK 2 965 179 (app. EUR 389 371.23) for 2015, HRK 3 024 482 (app. EUR 397 158.66) for 2016, HRK 3 084 971 (app. EUR 405 101.83) for 2017, HRK 3 146 671 (app.

⁽³⁾ Official Gazette of the Republic of Croatia-NN Nos 153/2005, 63/2007 and 152/2008.

⁽⁴⁾ Official Gazette of the Republic of Croatia-NN Nos 53/2007, 111/2007 and 141/2011.

⁽⁵⁾ Official Gazette of the Republic of Croatia-NN Nos 53/2007, 39/2011 and 57/2013.

EUR 413 203.87) for 2018, HRK 3 209 604 (app. EUR 421 467.94) for 2019, HRK 3 273 796 (app. EUR 429 897.30) for 2020 and the total amount will be: HRK 18 704 706 (app. EUR 2 456 200.83).

Operation of the measure

The competent Croatian Mine Action Centre (HCR) departments will oversee and keep records of the operation of the machinery. Records will be kept per project (site). 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. The forms will be approved by the site manager and verified by a HCR official responsible for monitoring the project, who will be present at the demining site at all times for the purpose of carrying out on-the-spot checks.

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 in addition to carrying out its other monitoring duties. The tax exemption will be granted by refunding the excise duty paid.

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

The measure will not favour certain enterprises over others since it will apply to all enterprises involved in humanitarian demining, thus no economic advantage will be given to any particular enterprise involved. Similarly Croatia assumes that 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.

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 8(1), 8(2)(c) and (d).

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 exemption in question the Croatian authorities pursue the objective to speed up the demining of the remaining contaminated areas in various regions of Croatia. Without the measure gas oil used to propel machinery in humanitarian demining would be taxed at HRK 2 860 (app. EUR 375.54) per 1 000 l. To be noted that Croatia applies the same rate of taxation to gas oil used as propellant and for the purposes laid down in Article 8(2)(c) and (d) of Directive 2003/96/EC. Also the time-limited application of the requested tax exemption would create an incentive for the economic operators involved in humanitarian demining activities to finalise their work before the expiration of the six year period of the measure and therefore to contribute to the stated policy objective, which is to speed up the

demining of the remaining contaminated areas. In Croatia, except of the measure envisaged there are no other subsidies that apply to economic operators involved in humanitarian demining of mine-contaminated areas.

Croatia has pointed out that the application of the measure would have immediate positive effects on human life and health in the areas contaminated by mines and unexploded ordnance. In accordance to the above, the Commission notes that according to the information provided by the Croatian authorities in the period between 1991 and 2013, 1 976 people sustained mine-related injuries in Croatia, where 510 of those died. It also notes that the loss of revenues from the failure to cultivate mine-contaminated agricultural land could reach the amount of EUR 50 million.

It can be concluded that the wish to apply a tax exemption to gas oil used to operate machinery in humanitarian demining in various regions of Croatia is based on specific policy considerations in particular as regards social, safety, health and regional policy.

Consistency with the other policies and objectives of the Union

The requested measure concerns mainly the EU's health regional and environment policy to the extent that it will partly help for the 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. It should be noted that it is estimated that 900 000 people in Croatia still live in proximity to suspected mined areas putting their health and safety in danger.

The Commission notes that 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.

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

Under the circumstances described, it 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.

Period of application of the measure

The Commission suggests that the period of application is set to the maximum allowed by Directive 2003/96/EC, i.e. six years. This period seems appropriate in order to allow the Croatian authorities to gather information to assess the results of the measure and provide economic operators benefiting from the measure with a sufficient degree of certainty and enough time to conclude the process of demining of the contaminated areas.

State aid rules

The Croatian authorities envisaged to apply tax exemption to gas oil used to operate machinery in humanitarian demining by refunding all the excise duty. The measure constitutes state aid and should be notified to the Commission pursuant to Article 108(3) of the TFEU.

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

Consultation of interested parties

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.

3. LEGAL ELEMENTS OF THE PROPOSAL

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 exemption 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 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

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authorising Croatia to apply tax exemption to gas oil used to operate machinery in humanitarian demining 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 letter dated 8 April 2014, the Croatian authorities requested an authorisation decision which will allow Croatia to apply tax exemption to gas oil used to operate machinery in humanitarian demining in accordance with Article 19 of Directive 2003/96/EC.
- (2) 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 will thus have immediate positive effects on human life and health in these regions.
- (3) The measure is limited to accredited special-purpose machines designed and built specifically for clearing mined areas.
- (4) The measure is limited to mine-contaminated areas on the territory of Croatia.
- (5) The measure will apply to all operators involved in humanitarian demining in Croatia, thus no economic advantage will be given to any particular operator involved.
- (6) 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 European Union's health, environment, energy and transport policies.
- (7) It follows from Article 19(2) of Directive 2003/96/EC that each authorisation granted under this Article must 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 the contaminated areas, the authorisation is granted for a period of six years.
- (8) This decision is without prejudice to the application of the Union rules regarding State aid,

⁽¹⁾ OJ L 283, 31.10.2003, p. 51.

HAS ADOPTED THIS DECISION:

Article 1

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

Article 2

This Decision shall take effect on the day of its notification. It shall expire six years thereafter.

Article 3

This Decision is addressed to the Republic of Croatia.

Done at Brussels,

*For the Council
The President*