

ENERGY TAXATION DIRECTIVE

Position paper by ECSA, CLIA Europe, Interferry and EUDA to accompany the response to the public consultation exercise on the evaluation of the Directive launched by DG TAXUD in March 2018

Introductory Remarks

ECSA together with CLIA, Interferry and EUDA wish to submit this joint position paper evaluating the directive from the shipping industry's perspective.

We welcome this process of consultation on the evaluation of this Directive. While it is very good to evaluate whether the Directive is still fit for purpose and whether it needs updating in view of practical problems identified or updates required in view of changing needs, we caution on approaches calling for automatic alignments to other policy areas or to changes to the scope/framework of the Directive.

Background on the Shipping Industry

We find it important to start by explaining the context of the shipping industry. This is important to understand certain provisions in the current Directive, our considerations on how the Directive currently applies in our industry and how we propose the Directive could be possibly amended to better cater for the changing needs of the industry in view of the international competition and environment considerations.

Comments on Current Application of the Directive

Exemption for fuel for navigation under Article 14.1.c¹

We are aware that the jurisprudence of the CJEU on Article 14.1.(b) and (c) have given rise to some uncertainty in Member States as to how to interpret and implement the exemptions and that in this exercise the Commission will attempt to see if and how this can be improved/clarified in the text.

We welcome that the Commission is seeking to solely clarify the interpretation of the provisions and is not questioning their merit or justification.

The availability of tax-free bunkers and luboils is of great importance for the shipping industry, in Europe as elsewhere. It enables shipping companies to provide the transport (and other) services on which the wider economy relies, at a price that is competitive and affordable. It is appropriate today for the same reasons as it has always been:

- (i) It is, and always has been, standard practice all over the world for ships to be able to obtain their bunkers duty-free. This international norm is reflected in the International Convention on the Simplification and Harmonisation of Customs Procedures (the Kyoto Convention) 1999. The Convention stipulates, in chapter 4 of Annex J, that ships on international voyages shall be entitled to take on board fuel and lubricants, exempt from duties and taxes. Article 14 of the Energy Taxation Directive, provide the basis for the EU to conform to the global norm as stipulated in this international Convention. If this were to be amended to impose tax on ships' fuel, the EU would be acting in defiance of global norms and Convention stipulations.
- (ii) Imposing tax on bunkers sold/bought in EU ports would undermine the competitiveness of EU businesses in world markets significantly. The capacity of ships' bunker tanks varies depending on the trades for which the ship was designed – but, typically, a ship will be capable of carrying

¹ Article 14.1.c: 'energy products supplied for use as fuel for the purposes of navigation within Community waters (including fishing), other than private pleasure craft, and electricity produced on board a craft. For the purposes of this Directive 'private pleasure craft' shall mean any craft used by its owner or the natural or legal person who enjoys

its use either through hire or through any other means, for other than commercial purposes and in particular other than for the carriage of passengers or goods or for the supply of services for consideration or for the purposes of public authorities.

sufficient bunkers for several weeks. If the EU were to impose tax on bunkers supplied in European ports, the certain practical consequence would be that ships would purchase their bunkers in ports outside the EU where they could be obtained tax-free (and, therefore, more cheaply). It is entirely likely that ships' trading patterns and itineraries would be adjusted as necessary to enable them to visit a port outside the EU where they could obtain such cheaper fuel. Clearly, this would cause serious harm to the businesses that currently supply fuel to ships in EU ports; equally clearly, the EU would raise no new tax revenue.

These arguments were recognized in the 2011 Commission proposal that left the exemptions for international aviation and maritime transport unchanged because of existing international obligations and the risk of competitive distortions in the case of unilateral actions from Member States. The arguments remain equally valid today.

Dredging²

We are aware that there have been discussions underway in some Member States and in the ITEG on the interpretation of the CJEU case law in relation to the exemption in Article 15.1.k which have given rise to the question as to whether dredgers should be eligible for duty-free fuel.

It is important to emphasise that dredgers navigate; and it is a matter of settled law that all navigation activity for commercial purposes comes within the scope of the exemption, regardless of the purpose of the navigation.

We understand that some Member States have sought to create a distinction between bunkers for navigation (ie fuel for the ship's engines) and fuel for its dredging machinery, and to tax the latter. The dredging machinery is an integrated part of the vessel and such a distinction is therefore artificial and false. Moreover any such differential tax treatment will cause competitive distortions and clear competitive disadvantages for certain companies. For vessels having a single bunker tank it will be impossible to make the split, and any apportionment of the fuel would necessarily be arbitrary and administratively onerous.

² Article 15.1.k - 'motor fuels used for dredging operations in navigable waterways and in ports'

The industry considers that given that the voluntary exemption in Article 15.1.k for dredgers causes competitive distortions in the market and competitive disadvantages in countries where the authorities try to tax such practices.

We consider that the dredgers should be treated in the same way as all other merchant ships and that the exemption for their fuel should similarly become a mandatory one.

Shore-Side Electricity

The current procedures for favourable tax treatment for shore-side electricity under Directive 2003/96/EC are cumbersome (a lengthy procedure for application for authorisation submitted to the Commission and approved by the Council and the authorisation can only be for time-limited period of time, so renewal of authorisation would be required).

Running on electricity supplied from shore rather than on electricity generated on board can significantly reduce the volume of CO₂ emitted by a ship while in port. It is perverse that the tax treatment of the greener option should be less favourable.

A permanent arrangement, would ensure much needed legal clarity and certainty for port and ship operators about the tax measures applied for the purpose of promoting the use of shore-side electricity.

Therefore, in order to remove a disincentive for the greener option of using shore-side electricity, it would be important to create a mandatory tax exemption in a revised Directive.

Electricity and Alternative Fuel as Ship Fuel

Currently according to the Commission's interpretation only the electricity produced on board (through for eg diesel generators) is exempted from energy taxation under Article 14(1)(c). It considers that the current Directive does not cover electricity supplied to the ship. So for example electricity supplied to a battery-driven or a hybrid electric ship is normally subject to taxation.

While we are aware that there are different possibilities³ to get a tax reduction or even a tax exemption for electricity,

³ One option e.g. would be to extend a tax reduction to the minimum level of taxation to electric or hybrid ships used for local passenger transport (Article 5 of the Directive). Another option would be for the ship to claim that it is energy-intensive business as defined in Article 17(1)(a) of the Directive, but it would have to meet the requirements

none of these options are specific to shipping or navigation. All energy supplied to a merchant ship or to a dredger to enable it to operate should be subject to the same tax treatment, whether the energy is supplied as fuel or as electricity.

General Tax Exemption for all Energy products for ships navigating for commercial purposes

The shipping industry considers that a revised Directive should take a technology neutral approach. Currently, it is not providing for the equal treatment of energy supplies to the shipping industry.

In view of the global nature of the industry and the importance of the move to greener shipping through the use of cleaner technologies to ensure environmental objectives are met, a revised Directive should provide for a taxation exemption for energy carriers (i.e. fuels and electricity) in order to close the cost gap between HFO and alternative fuels and electricity.

The gap existing under the current Directive hampers investments in and the uptake of cleaner technologies, such as shore side electricity, fuel cells, methanol, etc.

An exemption also granted to alternative fuels would further stimulate a switch to greener fuels.

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For more information, please contact:

Claudia Vella Casagrande

Director – Social, Fiscal & Legal Affairs, ECSA
Rue Ducale, Hertogstraat 67/B2, 1000,
Brussels, Belgium
Email: claudia.vellacasagrande@ecsa.eu

stipulated thereof. If the electricity is from a renewable source of energy it can be exempted altogether (Article 15(1)(b)), etc.

There is the possibility for Member States to request an authorisation to apply a reduced rate or even an energy tax

ECSA represents the national shipowners' associations of the EU and Norway. Founded in 1965, it promotes the interests of European shipping so that the industry can best serve European and international trade in a competitive and free business environment, to the benefit of both shippers and consumers. The European shipowners control 40% of the global merchant fleet.

CLIA EUROPE - Cruise Lines International Association (CLIA) is the world's largest cruise industry trade association, providing a unified voice and leading authority of the global cruise community. CLIA supports policies and practices that foster a safe, secure, healthy and sustainable cruise ship environment for the more than 25 million passengers who cruise annually and is dedicated to promote the cruise travel experience.

INTERFERRY represents the ferry industry world-wide, bringing together all the facets of a very diverse maritime segment, that transports billions of passengers and large amounts of goods over the world and which also shows significant versatility in terms of different business models and prevailing regulatory frameworks. INTERFERRY is very actively engaged with the IMO and vis-à-vis supranational bodies.

EuDA - The European Dredging Association was founded in 1993 as a non-profit industry organisation for European dredging companies and related organisations to interface with the various European Union's ("EU") Institutions and also some International Organizations (such as IMO, HELCOM or ILO). The European dredging companies, members of EuDA, are world market leaders with about 80% share of the worldwide open dredging market. Although 70% of operations take place outside Europe, 90% of the returns flow back to Europe.

exemption for electricity supplied to a ship for the purpose of navigation on the basis of Article 19 of the Directive. The procedure is described in this provision.