

Brussels, 18 November 2021

The European Community Shipowners' Associations welcomes the opportunity to comment on the Revision of the Energy Taxation Directive and would like to reiterate its position regarding the energy taxation directive.

ECSA represents 19 national shipowners' associations based in the EU and Norway. European shipowners control 39.5% of the global commercial fleet, contribute 149 billion euros per year to the EU GDP and provide 2 million Europeans with careers both on board and ashore. ECSA strives for a regulatory environment that fosters the international competitiveness of European shipping, to the benefit of the EU.

ECSA [welcomes](#) the increased climate ambition of the 'Fit for 55' climate package published on 14 July, recognising that the climate crisis is one of the greatest humanitarian, economic and environmental challenges our societies are facing. However, European shipowners notice a lack of consistency among some of the proposals of the package which may undermine its environmental objectives and therefore urge for more coherence. On the Energy Tax Directive, removing the current tax exemption for fuel is not a consistent way forward.

In response to the Commission consultation on the EU Green deal – Revision of the Energy Taxation Directive, ECSA wishes to reiterate the importance for the Directive to follow a technology neutral approach which should provide equal treatment of energy supplies to the shipping industry.

ECSA is of the view that the arguments for the exemption for fuel for navigation under article 14.1.c remain valid, given the unchanged international legal context and need for global competitiveness of EU shipping. We would like to highlight that bunkering outside Europe remains a high risk leading to decreased fiscal income and no significant improvement in environmental efficiency.

The Directive should also provide for a taxation exemption for all energy carriers in order to close the cost gap between traditional marine fuels and alternative fuels and electricity. The revised text should aim at closing the gap which hampers investments in and the uptake of cleaner technologies and fuels.

For further details please see the attached position paper.

REVISION OF THE ENERGY TAXATION DIRECTIVE

Position paper by ECSA, CLIA Europe, Interferry and EuDA in response to the public feedback exercise on the EU Green Deal – Revision of the Energy Taxation Directive launched by the European Commission in March 2020. This position paper is to provide detailed explanations to the responses given to the European Commission's questionnaire, therefore the answers given there should be read together with this explanatory note.

The European shipping industry is dedicated to be at the heart of the green future.

Facilitating the transition towards a greener and more sustainable future requires that the right tools are chosen and calibrated in a way that it takes into account environmental, social and economic sustainability. Hence, it safeguards the EU shipping industry's competitive edge and its geopolitical importance vis-a-vis global competitors.

The Energy Taxation Directive has the potential to encourage towards transition if it is based on a technology neutral approach.

Key messages

- The arguments for the exemption for fuel for navigation under article 14.1.c remain valid, given the unchanged international legal context and need for global competitiveness of EU shipping
- Removing the disincentive for the greener option of using shore-side electricity is needed: a mandatory tax exemption would facilitate ships to significantly reduce CO2 and other air emissions as well as noise while in port
- Electricity supplied to the ship for charging batteries or for direct consumption so engines can be switched off should be subject to the same tax treatment as fossil fuels

- Legal clarity all trips of merchant vessels being part of normal commercial operations should fall under the exemption defined in article 14.1.c

Introductory Remarks

ECSA together with CLIA, Interferry and EuDA (the industry) wish to submit this joint paper reiterating the shipping industry's position with regards to the directive. We believe that the Energy Taxation Directive (ETD) can be instrumental to support the industry's use of new low- or zero carbon fuels, thereby supporting the decarbonisation of shipping.

We appreciate the commitment of the EU to lead the way in the fight against global warming. Shipping is committed to becoming climate neutral as soon as possible in this century. At the same time, the industry believes that lifting the tax exemption will not achieve the intended climate objectives being claimed, as it will not stop most of the industry from receiving tax free bunker fuel outside EU waters. It will also negatively affect EU jobs and business – intra EU shipping, bunkering companies and EU ports.

Shipping is a global industry in need of global regulation in order to ensure a global level playing field and avoidance of distortion of competition. The industry believes net zero emissions are achievable, provided that global solutions are implemented to operationalize the energy transition, and active steps are taken by the legislators to provide an enabling framework to help facilitate the development of new propulsion technologies and fuels, including the required massive investment in bunkering infrastructure on a worldwide basis.

In view of the above, the revision of the Energy Taxation Directive should be seen as a means of enabling this transition.

Technology neutral approach to encourage towards transition

Embracing the climate change objectives and the need to move to greener shipping through the use of cleaner technologies, the industry considers that the Directive should be updated with developments in new technologies that have been or are being developed such as

renewables and low carbon fuels etc. The current Directive is not providing equal treatment of energy supplies to the shipping industry thus hampering investments in and the uptake of cleaner technologies, such as shore-side electricity, fuel cells, ammonia, methanol, etc. Therefore, the industry advocates for a technology neutral approach so that all energy supplied to sea going vessels including a.o. cargo vessels, ferries, dredgers and service vessels to enable it to operate should be subject to the same tax treatment, whether the energy is supplied as fuel or as electricity. Therefore, a mandatory EU wide taxation exemption for all energy carriers (i.e. fuels and electricity, including shore-side) would provide a level playing field which would help close the cost gap between traditional marine fuels and alternative fuels¹ and electricity.

While, as explained above, the industry completely endorses the approach that tax incentives should be used to enable the transition to a climate neutral EU and that the revision of the ETD should be considered in this light, it is clear that providing incentives for alternative fuels and use of electricity on board are the proper way forward. Below are the arguments in more detail why taxing bunker fuels in EU ports is not an effective way forward.

Exemption for fuel for navigation under Article 14.1.c²

The global nature of the industry necessitates global rather than regional measures

The availability of tax-free bunkers and lubricant oils in Europe is of great importance. Not only is this a reflection of an international norm but also it is essential for EU companies to compete on the same footing as shipowners and suppliers from outside the EU. The international legal and global competitiveness

context of the shipping industry has not changed since the Directive was adopted. The arguments remain equally valid today.

Imposing tax on bunkers sold/bought in EU ports would significantly undermine the competitiveness of EU businesses in world markets. 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 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 deep-sea shipping would bunker even more outside Europe³ and only short sea shipping will be faced with higher bunker fuel prices. If the cost increase is not passed on to shippers, profit margins of short sea shipping operators will be reduced with less funds available for R&D for green technologies. If the increased fuel costs are passed on to shippers, shippers will look at alternatives, mainly the much less efficient road transport leading to higher CO₂ emissions. Many European citizens living on islands will face higher transport costs, with a negative effect on the social cohesion of Europe. All this will negatively affect EU business and society – intra EU shipping, bunkering companies and EU ports. This might also affect EU ports' investments in LNG or shore power infrastructure. Besides, the EU would raise only marginal new tax revenue. And most importantly, it will not incentivise the much needed shift to alternative fuels necessary to decarbonise the shipping industry.

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

¹ Currently according to the Commission's interpretation only the electricity produced on board (through for e.g. 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 possibilities to get a tax reduction or even a tax exemption for electricity, none of these options are specific to shipping or navigation.

² 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.

³ Already now, the large majority of bunker ports are outside Europe. Russia, the UK and Gibraltar (after Brexit) and ports in the Mediterranean will take over business from EU bunker ports.

duties and taxes. Article 14 of the Energy Taxation Directive, provides the basis for the EU to conform to the global norm as stipulated in this international Convention. If it was decided to impose tax on ships' fuel, the EU would be acting in defiance of global norms and Convention stipulations.

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.

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 is required. 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 ships' engines can significantly reduce the volume of CO₂, other air emissions and noise 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 e.g. 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 possibilities⁴ to obtain a tax reduction or even a tax exemption for electricity, none of these options are specific to shipping or navigation. All energy supplied to sea-going vessels to enable it to operate should be subject to the same tax treatment, whether the energy is supplied as fuel or as electricity.

Clarity and harmonisation of interpretation of the current exemption is needed

Allow us to mention that we have also been advocating that a revised ETD should provide clarity of interpretation of the exemption in view of varying interpretation due to case law. We advocate that all merchant vessels that are operating for consideration – whether transporting passengers or cargo or travelling to a yard for maintenance or to another country to pick up a charter there – so all trips of merchant vessels that are part of normal commercial operations should fall under the exemption in article 14.1.c and thus be tax free. Dividing the fuel into part being tax free and the part used for voyages for maintenance or empty voyages, being normal commercial operations, would also be not practically implementable and lead to no sufficient monetary gains to justify it. Moreover, to avoid market distortions the dredging sector needs harmonisation of treatment in the EU. We have also called for the voluntary exemption to become mandatory and thus moved from Article 15 to 14.

⁴ 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 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 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.

To conclude

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, a revised Directive should provide for a taxation exemption for all energy carriers (i.e. fuels and electricity) in order to close the cost gap between traditional marine fuels and alternative fuels and electricity.

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

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ECSA represents the national shipowners' associations of the EU, the UK 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 39.5% 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.