

EN

EN

EN



EUROPEAN COMMISSION

Brussels,  
COM(2011) 169/3

2011/xxxx (CNS)

Proposal for a

**COUNCIL DIRECTIVE**

**amending Directive 2003/96/EC restructuring the Community framework for the  
taxation of energy products and electricity**

{SEC(2011) 409}  
{SEC(2011) 410}

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

- **Grounds for and objectives of the proposal**

Traditionally, energy taxes have been levied for several reasons, in particular to raise revenue, but also to influence consumer behaviour towards a more efficient use of energy and cleaner energy sources. In order to ensure the proper functioning of the Internal Market several key aspects of energy taxation are already governed at EU level under Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity<sup>1</sup> (hereafter also referred to as "the Energy Taxation Directive" or "the ETD").

Since the time the ETD was adopted, the underlying policy framework changed radically. In the areas of energy and climate change, concrete and ambitious policy objectives have been defined for the period until 2020. The climate and energy policy package adopted in 2009 provides a policy framework to implement these objectives in a cost-effective and fair way. Taxes on energy represent one instrument at the disposal of Member States for the purposes of reaching the objectives set. For example the impact assessment underpinning the Commission proposal for the climate and energy policy package<sup>2</sup> showed that the overall welfare and cost-efficiency can be increased if revenue generating instruments, such as taxation, are used to reduce emissions in the sectors not subject to the Community scheme under Directive 2003/87/EC<sup>3</sup> (hereafter also called the EU ETS [EU Emission Trading Scheme]).

For a proper framework to be available for the use of energy taxation in this new environment, the March 2008 European Council requested to bring the Directive more closely into line with the EU's energy and climate change objectives<sup>4</sup>. The present proposal, therefore, aims at the following objectives:

- (1) Ensure consistent treatment of energy sources within the ETD in order to provide a genuine level playing field between energy consumers independent from the energy source used.
- (2) Provide an adapted framework for the taxation of renewable energies.
- (3) Provide a framework for the use of CO<sub>2</sub> taxation to complement the carbon price signal established by the ETS while avoiding overlaps between the two instruments.

---

<sup>1</sup> OJ L 283, 31.10.2003, p. 51.

<sup>2</sup> SEC(2008) 85 vol. II, pp.51 et seq.

<sup>3</sup> Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (OJ L 275, 25.10.2003, p. 32).

<sup>4</sup> European Council of 13-14 March 2008, Presidency conclusions (7652/1/08 rev.1, 20/05/2008).

- **General context**

This proposal intends to bring about the necessary adaptations of some of the basic provisions of the Energy Taxation Directive, ensuring a higher degree of consistency in the way energy taxes contribute to the objectives of less and cleaner energy consumption in the EU. The ETD in its present version raises notably the following problems:

Firstly, it does not ensure the desirable degree of consistency in the treatment of the basic fossil energy sources and electricity. Taking into account the energy content of the various products, minimum levels of taxation vary substantially according to the product concerned. Hence, some products are favoured over others, the most favourable treatment being reserved to coal. This also implies that certain businesses can be better off compared to others, depending on the energy source they use.

Secondly, the price signal the Energy Taxation Directive introduces via its minimum levels of taxation is not properly related to the need to combat climate change. The terms of the Directive are not well adapted to ensure the proper functioning of the internal market in circumstances where Member States resort to CO<sub>2</sub>-related taxation in order to reduce CO<sub>2</sub> emissions.

Thirdly, in spite of the growing market relevance of renewable fuels, their tax treatment under the ETD still relies on rules developed at a time when these fuels were niche alternatives without major market significance. Standard taxation of renewable fuels is based on volume and on the rate applicable to the fossil product replaced by the renewable product concerned. The lower energy content of renewable fuels is not taken into account, and thus the same tax rate leads to a comparatively higher burden compared to the competing fossil fuels. Member States can only correct this effect and, where necessary, compensate differences in production costs by applying favourable tax treatment according to Article 16 of the ETD. The standard tax treatment of renewable fuels is therefore not adapted to their characteristics and any adaptation can only take the form of optional de-taxation subject to a strict State aid assessment.

Fourthly, taxes on energy are levied under the Energy Taxation Directive in the same way whether or not, in a particular case, the limitation of CO<sub>2</sub> emissions is ensured through the EU ETS. As a result, mechanisms of Union law intended to limit such emissions may overlap in certain cases and may be completely missing in others. Both situations are undesirable, because of the ensuing cost-efficiency losses and/or distortions in the internal market.

- **Existing provisions in the area of the proposal**

Council Directive 2003/96/EC defines the taxable energy products, the uses that make them subject to tax and the minimum levels of taxation applicable to each product depending on whether it is used as propellant, for certain industrial and commercial purposes or for heating.

- **Consistency with other policies and objectives of the Union**

This proposal is in line with the main policies and objectives of the Union. Its aim is to ensure that, with regard to the taxation of energy, the internal market continues to function properly in a context where Member States will need to contribute to the fulfilment of the EU objectives in the field of energy and climate change. Also, for the sake of coherence with the

Climate and Energy Package adopted in 2009, this proposal shall take effect from 1 January 2013.

## 2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENT

### • Consultation of interested parties

The present proposal has been formulated against the background of a wide range of external contributions. These contributions took the form of feedback received in the course of a public consultation opened through the green paper on market based instruments<sup>5</sup> and direct consultations with Member States and other stakeholders. External studies have also been commissioned by DG TAXUD for the purposes of the impact assessment.

The green paper on market-based instruments, amongst other things, set out the areas in which changes to the ETD could be envisaged and outlined potential ways forward. In particular, it raised the question whether the ETD should not be restructured with a view to better reflect the fact that energy taxation serves more than one objective (revenue generation and energy savings on the one hand, environmental considerations on the other).

### • Impact assessment

In order to examine how the different policy objectives could best be addressed, a number of approaches were examined and compared to the *baseline scenario (business as usual)*. In this scenario, no further changes would be made to the existing energy taxation framework, fully applicable to all Member States once the remaining transitional periods have expired. By definition, the ETD would not be brought more closely in line with the EU's energy and climate change objectives. The results of two courses of action, namely ETD revision at a later stage and tax co-ordination instead of such revision, would be comparable to the baseline scenario, *inter alia* because they would not lead to timely results. The following approaches were examined:

- **Revision of the existing tax treatment of the various energy sources according to a single criterion:** the tax treatment of the various products could be aligned on the basis of their respective energy content with a view to render energy taxes more neutral and to limit negative effects on the operation of other instruments and policies (policy option 1); alternatively, the alignment could be based on the respective CO<sub>2</sub> content of the various products in order to make energy taxes systematically reflect the CO<sub>2</sub> performance of the products concerned with a view to support the achievement of EU objectives in the field of climate change (policy option 2).
- **Revision of the structure of the Directive** taking into account the different objectives behind energy taxes (revenue generation and energy savings on the one hand, environmental considerations on the other): This approach would lead to the creation of specific CO<sub>2</sub>-related taxes at national level and would require that other taxes levied on energy be neutral, i.e. that they do not differentiate between energy sources, in order not to

---

<sup>5</sup> Green paper on market based instruments for environment and related policy purposes - COM(2007) 140, 28.3.2007.

affect the proper operation of CO<sub>2</sub>-related taxes. This approach translated into policy option 3 and two transport specific policy options 5 and 6.

- ***Introduction of an additional uniform CO<sub>2</sub>-related tax:*** such a tax would be imposed on top of the taxes already levied under the ETD in a way that complements the EU emission trading scheme (option 4).

The effects of the different approaches were tested in the impact assessment. The results of the assessment are summarised in the impact assessment report. Having regard to how the various policy options contribute to the objectives set out above, as well as to the need to respect Member States' budgetary interests as well as considerations of equity, a preferred policy set based on policy option 3 and transport policy option 6 was identified in the impact assessment. The present proposal is based on this preferred policy set.

The impact assessment showed that the objectives set out above can be achieved without economic costs and that the revision can potentially bring economic benefits, in particular if additional revenue from general energy consumption taxation or CO<sub>2</sub>-related taxation would be used to reduce the employers' social security contributions. The impact assessment also showed that the ETD revision would not create an undue burden on businesses and would not lead to competitiveness losses at sectoral level. Moreover, joint revision of taxation of motor and heating fuels reduces the risk of negative distributional impacts, a risk often linked to policies that tend to increase the costs of heating. In this context, the impact assessment confirmed the key advantage of taxation which, in addition to its influence on behaviour of consumers, generates revenue that can be used to finance accompanying measures and thereby indicated how distributional concerns can be addressed. However, it also emerges from the impact assessment that the distributional impacts on households differ from one Member State to another, more than any other single impact and thus the continuation of the possibility to exempt households from taxation at national level seems justified.

### **3. LEGAL ELEMENTS OF THE PROPOSAL**

- **Summary of the proposed action**

The Commission proposes with effect from 2013:

*1. To introduce an explicit distinction between energy taxation specifically linked to CO<sub>2</sub>-emissions attributable to the consumption of the products concerned (CO<sub>2</sub>-related taxation) and energy taxation based on the energy content of the products (general energy consumption taxation).*

CO<sub>2</sub>-related taxation would be based on the reference CO<sub>2</sub> emission factors set out in point 11 of Annex 1 to Commission Decision 2007/589/EC<sup>6</sup>. General energy consumption taxation would be based on the net calorific value of the energy products and electricity as set out in

---

<sup>6</sup> Commission Decision 2007/589/EC of 18 July 2007 establishing guidelines for the monitoring and reporting of greenhouse gas emissions pursuant to Directive 2003/87/EC of the European Parliament and of the Council (OJ L 229, 31.8.2007, p. 1).

Annex II to Directive 2006/32/EC<sup>7</sup> and, in the case of biomass or products made of biomass, in Annex III of Directive 2009/28/EC<sup>8</sup>.

However, the specific CO<sub>2</sub> emission factors and net calorific values for biomass or products made of biomass for which Article 17 of Directive 2009/28/EC lays down sustainability criteria (biofuels and bioliquids as defined in Article 2(h) and (i) of this Directive), only apply as far as these criteria are respected (see Article 1, point (1) of the proposal, concerning Article 1 of the ETD). As a consequence, biofuels or bioliquids not complying with these criteria would be taxed on the basis of the CO<sub>2</sub> emission factor and of the net calorific value of the equivalent motor or heating fuel.

Economic efficiency pleads in favour of introducing CO<sub>2</sub>-related taxes as a complement to the EU emission trading scheme. However, Member States should also be able to continue to tax consumption of motor fuels and heating fuels for other purposes, i.e. revenue generation, not related to reductions of greenhouse gases. To allow for such diversified objectives and to ensure to the extent possible that all of them can be pursued in a consistent manner, taxation other than CO<sub>2</sub>-related taxation should be linked to the energy content of the energy sources.

*2. To extend the scope of the Energy Taxation Directive – when it comes to CO<sub>2</sub>-related taxation – to energy products in principle falling within the scope of Directive 2003/87/EC and at the same time to provide for an obligatory exemption from CO<sub>2</sub>-related taxation in cases subject to the Community scheme under that Directive.*

The set of amendments will ensure that the ETD complements Directive 2003/87/EC seamlessly, as regards the need for a price signal attached to CO<sub>2</sub> emissions (see in particular Article 1, points (1) and (4)(a) of the proposal, concerning Articles 1 and 4(2) of the ETD), while avoiding overlaps between the EU emission trading scheme, on the one hand, and taxation serving the same purpose, on the other (see Article 1, point (11)(a)(ii) of the proposal, concerning Article 14 of the ETD).

Moreover, there is a need to limit the potential cost impact of CO<sub>2</sub>-related taxation on the sectors or sub-sectors deemed to be exposed to a significant risk of carbon leakage in the sense of Article 10a(13) of Directive 2003/87/EC. Accordingly, it is necessary to provide for transitional measures so as to avoid an undue cost impact while maintaining environmental effectiveness of CO<sub>2</sub>-related taxation. In this regard, inspiration should be drawn from the regime of free allocation of greenhouse gas emission allowances under Directive 2003/87/EC (see proposed new Article 14a of the ETD [Article 1, point (12) of the proposal]). Other sectors or sub-sectors of the economy may also be subject to carbon leakage. As far as the agricultural sector is concerned, the Commission is currently preparing a report examining the risk of carbon leakage in that sector. As soon as this report is available, the Commission will take appropriate follow-up action to ensure that all sectors susceptible to carbon leakage are subject to the same treatment under the future ETD, either by ensuring the conclusions of the report are taken into consideration during the ongoing discussions in the Council on the proposal revising the ETD or, should the report not be available before the adoption of the proposal, by way of a separate legislative initiative.

---

<sup>7</sup> Directive 2006/32/EC of the European Parliament and of the Council of 5 April 2006 on energy end-use efficiency and energy services and repealing Council Directive 93/76/EEC (OJ L 114, 27.4.2006, p. 64).

<sup>8</sup> Directive 2009/28/EC of the European Parliament and of the Council on the promotion of the use of energy from renewable sources (OJ L 140, 5.6.2009, p. 16).

For purposes other than CO<sub>2</sub>-related taxation, the scope of the ETD remains unchanged.

*3. To revise the minimum levels of taxation, ensuring in particular that they reflect CO<sub>2</sub> emissions and net calorific value in a consistent manner for the various energy sources, providing for transitional periods where necessary (see Article 1, points (6), (7), (8) and (23) of the proposal, concerning Articles 7, 8 and 9 of the ETD, as well as Annex I to the Directive).*

To ensure consistent treatment, equally, of taxable products for which no specific minimum levels of taxation are established, the Commission also proposes to amend Article 2(3) of the Energy Taxation Directive (see Article 1, point (2)(b) of the proposal, concerning Article 2(3) and (4) of the Directive). In case Decision 2007/589/EC, Directive 2006/32/EC or Directive 2009/28/EC, does not contain a reference value applicable to the energy product concerned, Member States shall refer to relevant available information on its net calorific value and/or CO<sub>2</sub> emission factors. Moreover, the real value of the minimum levels of taxation should be preserved. The minimum rates of general energy consumption taxation should at regular intervals be automatically aligned to take into account the evolution of their real value in order to preserve the current level of rate harmonisation; to reduce the volatility stemming from energy and food prices, this alignment should be made on the basis of the changes in the EU-wide harmonised index of consumer prices excluding energy and unprocessed food as published by Eurostat (see Article 1, point (4)(b) of the proposal, concerning a new paragraph 4 to be added to Article 4 of the ETD). Since CO<sub>2</sub>-related taxation complements the operation of Directive 2003/87/EC, the market price of the emission allowances should be closely monitored in the five yearly review of the Directive set out in Article 1, point (21) of the proposal.

*4. To require that, when Member States set national levels of taxation, they replicate the relationship between the minimum levels of taxation fixed in the ETD for the various energy sources (see Article 1, point (4)(b) of the proposal, concerning a new paragraph 3 to be added to Article 4 of the ETD).*

This requirement is meant to ensure that consistent treatment of energy sources extends to the levels of taxation fixed nationally (above the minimum levels set in the ETD). For motor fuels it would seem appropriate to provide for a transitional period until 2023, having regard to the important differences in the rates applied to different motor fuels in several Member States.

*5. To abolish the possibility for Member States to differentiate between the tax treatment of commercial and non-commercial use of gas oil as motor fuel (see Article 1, point (6) of the proposal, replacing Article 7 of the ETD).*

The possibility for Member States to apply a lower level of taxation to commercial than to non-commercial use of gas oil as motor fuel would appear to be no longer compatible with the requirement to improve energy efficiency and the need to address the growing environmental impact of transport. The Commission therefore proposes to abolish this possibility.

In light of this approach, the 2007 proposal regarding Article 7 of the ETD<sup>9</sup>, becomes without object and is thus withdrawn.

*6. To simplify the structure of the minimum tax levels where possible.*

---

<sup>9</sup> COM(2007) 52, 13.3.2007.



The existing differentiation between business and non-business use of the energy products used for heating and of electricity is abolished (see Table C in the Annex to the proposal). The minimum levels of taxation for some industrial and commercial uses of motor fuels (see Table B in the Annex to the proposal) are aligned with the minimum levels of taxation applicable to the same products, in case they are used as heating fuels (see Table C in the Annex to the proposal). Finally, given that leaded petrol has become a fringe product, the Commission proposes not to differentiate any longer between leaded and unleaded petrol and to set a single minimum level of taxation for both products (see Table A in the Annex to the proposal).

*7. To limit the exemption of Article 14(1)(a) for energy products used to produce electricity to general energy consumption taxation (see Article 1, point (11)(b) of the proposal) and to add a new point in Article 14 to exempt from taxation, for a limited time period of eight years, electricity produced on shore and directly provided to vessels while at berth in a port (see Article 1, point (11)(a)(ii) of the proposal).*

In its current form, Article 14(1)(c) obliges Member States to exempt from taxation electricity produced on board a craft, including while at berth in a port while Article 15(1)(f) allows Member States to extend this tax exemption to inland waterways. In some harbours a cleaner alternative exists with the use of shore-side electricity (i.e. connection to the on-shore electricity grid). This technology is still at an early stage of development. In order to set a first incentive for its development and application, the Commission proposes to exempt from energy taxation shore-side electricity provided to ships while at berth in port. This exemption should apply during a period of eight years (starting from the time limit for transposition contained in the present proposal). This period will also provide the opportunity to elaborate, for the subsequent period, a more comprehensive framework allowing shore-side electricity to optimally develop. That framework could also comprise regulatory measures. Works on this framework could be initiated as soon as common technical standards for on-shore power supply systems will have been adopted within the International Organization for Standardization.

In order to establish a comprehensive and consistent CO<sub>2</sub> price signal outside the EU emission trading scheme, a new paragraph 3 should be added to Article 14 to limit the exemption of Article 14(1)(a) for energy products used to produce electricity to general energy consumption taxation. However, this should not apply to energy products used to produce electricity on board a craft, as it is very difficult in practice to distinguish between the use of energy products for this purpose and energy products used for navigation.

*8. To provide for a tax credit concerning CO<sub>2</sub>-related taxation for installations belonging to sectors or sub-sectors deemed to be exposed to a significant risk of carbon leakage (cf. new Article 14a of the ETD, formulated in Article 1, point (12) of the proposal).*

There is a need to limit the potential cost impact of CO<sub>2</sub>-related taxation on the sectors or sub-sectors deemed to be exposed to a significant risk of carbon leakage in the sense of Article 10a(13) of Directive 2003/87/EC. Accordingly, transitional measures that avoid an undue cost impact while maintaining environmental effectiveness of CO<sub>2</sub>-related taxation are needed, in a similar way as achieved with free allocation of greenhouse gas emission allowances under Directive 2003/87/EC. In order to maintain the full incentive to reduce emissions, this tax credit should be based on the historic energy consumption of an installation concerned in a specified reference period (either from 1 January 2005 to 31 December 2008 or, alternatively, from 1 January 2009 to 31 December 2010). The amount of the tax credit should moreover reflect the CO<sub>2</sub> tax that would have been incurred by the installation on the basis of the

historic consumption figures under the assumption that a CO<sub>2</sub>-efficient reference fuel had been used. For the purpose of this "fuel benchmark", the emission factor of natural gas shall be used to mirror the approach adopted under Commission Decision xxx/xxx on determining transitional Union-wide rules for harmonised free allocation pursuant to Article 10a of Directive 2003/87/EC<sup>10</sup>.

*9. To maintain the flexibility left by the Energy Taxation Directive, in particular the existing rule that Member States are free to apply more than only one tax on energy consumption. Nevertheless, the Commission proposes to revise some of the existing options, namely the ones that contradict the objectives that the present proposal intends to achieve, and, generally, to ensure consistency with the new general rules proposed. More precisely, the Commission proposes the following:*

- To limit the scope of Article 2(4) [new Article 3], concerning instances to which the Directive does not apply, to general energy consumption taxation, in order to establish a comprehensive and consistent CO<sub>2</sub> price signal outside the EU emission trading scheme. Moreover, Article 2(4) excludes so far from the scope of the Directive electricity when it accounts for more than 50% of the cost of a product [cf. the fourth indent of point (b) of the provision]. Yet, this rule risks distorting competition in the internal market and should be removed (see Article 1, point (3) of the proposal, new Article 3).
- *To abolish Article 9(2)* which provides for lower minimum levels of taxation for gas oil used for heating purposes in three Member States. This provision adds to the inconsistencies in the way various energy consumers are treated on the internal market (see Article 1, point (8) of the proposal).
- *To limit as much as possible the optional reductions and exemptions of Article 15* to general energy consumption taxation in order to establish a comprehensive and consistent CO<sub>2</sub> price signal outside the EU emission trading scheme (see Article 1, point (13)(a) of the proposal). This would however not apply to points (f) and (h) to (l) of Article 15(1), for the following reasons:
  - Member States should continue to benefit from full flexibility for applying exemptions or reductions to the benefit of households and charitable organisations for social reasons (point (h); cf. also details below);
  - It is proposed to phase out the possibility to apply exemptions or reductions to natural gas and LPG, since these products are not of renewable origin (point (i); cf. also details below);
  - The exemptions or reductions for energy products supplied for used as fuel for navigation on inland waterways in point (f), are based on international conventions at least for some of the waterways concerned; the dredging operations in navigable waterways and ports in point (k) constitute complementary operations;
  - The exemptions or reductions for aircraft and ships in point (j) mirror similar exemptions applied for VAT purposes and are related to the activities benefiting

---

<sup>10</sup> OJ L , , p..

from an exemption under Article 14(1)(b) and (c) which are based on international conventions;

- Coal gas referred to in point (l) falling within CN code 2705 is a product mainly occurring in the steel industry as a by-product of fuel use in metallurgical processes. It resulted from the consultation with Member States that subjecting it to taxation would create a disproportional administrative burden for both businesses involved and administrations.
- *To amend Article 15(1)(h)* so as to permit tax advantages for heating use by households independently from the energy source used, i.e. to remove the exclusion of certain sources such as heating oil. The Commission acknowledges that Member States might consider necessary tax advantages of the like, but takes the view that all energy sources should be put on an equal footing (see Article 1, point (13)(a)(i) of the proposal).
- *To amend Article 15(3)* which allows Member States to apply a level of taxation down to zero to energy products and electricity used in agricultural, horticultural or piscicultural works, and in forestry (see Article 1, point (13)(b) of the proposal). This provision adds to the inconsistencies in the way different business sectors are treated on the internal market, bearing in mind in particular that agriculture is one of the important sectors largely left outside the EU Emission Trading Scheme. Hence, as regards general energy consumption taxation, it is necessary to link the application of that option to a counterpart ensuring advances in the field of energy efficiency. As regards CO<sub>2</sub> related taxation the treatment of the sectors concerned should be aligned to the rules applying to industrial sectors. Exemptions from CO<sub>2</sub> related taxation should therefore only apply in so far as this is necessary to avoid the risk of carbon leakage.
- *To amend Article 5* so as to make clear that tax differentiation based on criteria listed in this Article should not extend to CO<sub>2</sub>-related taxation (see Article 1, point (5) of the proposal). Moreover, the possibility to apply a lower level of taxation to motor fuel consumed by taxis is used, in practice, for diesel fuel only. In light, also, of the new framework proposed, this possibility should be removed entirely (including for general energy consumption taxation), since it is no longer compatible with the objective of policies promoting alternative fuels, as well as policies promoting alternative energy carriers and the use of cleaner vehicles in urban transport.
- *To amend Article 16* so as to remove the option for Member States to provide for an exemption or tax reduction for biofuels by 2023 (see Article 1, point (14) of the proposal). In the medium term, this provision will no longer be necessary, in view of the changes proposed to the general rules of the ETD, which indeed take sufficiently account of the specificities of fuels that wholly or partly consist of biomass or products made of biomass (see Article 1, point (1) of the proposal). In the case of liquefied petroleum gas (LPG) and natural gas used as propellants, advantages in the form of lower minimum levels of general energy consumption taxation or the possibility to exempt those energy products from taxation on the basis of Article 15(1)(i) are no longer justified, in particular in the light of the need to increase the market share of renewable energy sources. These advantages should therefore be removed by 2023 as well (see Article 1, point (13)(a)(i) of the proposal).

10. To align Directive 2003/96/EC to Council Directive 2008/118/EC concerning the general arrangements for excise duty and repealing Directive 92/12/EEC<sup>11</sup> (see Article 1, points (11)(a)(i), (17) and (18) of the proposal, concerning Articles 14, 20 and 21 of the ETD).

11. To update the list of energy products in articles 2(1) and 20(1) of Directive 2003/96/EC, so as to include certain biofuels, updating and modernising as such the provisions relating to the application of the control and movement provisions of Directive 2008/118/EC. In addition, products under CN code 3811 should be made subject to the control and movement provisions of Directive 2008/118/EC taking into account the risk of tax evasion, avoidance or abuse they represent (see Article 1, points (2)(a) and (17) of the proposal, concerning Articles 2 and 20 of the ETD).

12. To make reference to the version presently applicable of the combined nomenclature in Article 2(5) of Directive 2003/96/EC. Moreover, Article 2(5) of the ETD should be aligned to the new legal framework obtaining under the TFEU, following the entry into force of the Lisbon Treaty (see Article 1, point (2)(b) and (21) of the proposal).

13. To delete Articles 18a and 18b, since these transitional provisions of the ETD have become obsolete (see Article 1, point (16) of the proposal).

14. To grant Spain and France the possibility to introduce higher rates of general energy consumption taxation in some parts of their territory, recognising the long-term process of decentralisation that is being carried out by them (see Article 1, point (15) of the proposal, concerning Article 18 of the ETD).

In view of its particular administrative structure and in order to facilitate the execution of the financial autonomy of its Autonomous Communities, Spain should be authorised to apply regionally higher levels of general energy consumption taxation. The same applies to France given the need to strengthen the financial capacity of the administrative regions in the process of decentralisation. However, it needs to be ensured that equal treatment between competing energy sources is maintained. Moreover, it must be ensured that any differentiation of the kind does not hinder the proper functioning of the internal market and does not affect intra-EU circulation of energy products.

Other Member States wishing to introduce a similar system of regional tax differentiation would have to request the Commission to submit a proposal to modify the ETD on the basis of Article 113 of the Treaty on the Functioning of the European Union.

15. In order to ensure free movement whilst at the same time respecting security requirements applicable to commercial motor vehicles and special containers, the definition of standard tanks of such vehicles in Article 24 of Directive 2003/96/EC should be updated so as to reflect the fact that fuel tanks are not exclusively fitted to commercial vehicles by their manufacturer (see Article 1, point (19) of the proposal). This issue was brought to the attention of the Commission by federations of transport companies, pointing out that some Member States systematically carried out controls on the respect of this definition and taxed motor fuel in tanks that did not fall within its scope. The issue has also been discussed with Member States at a recent meeting of the Committee on Excise Duty, which concluded that a modification of the definition in Article 24 was the only possible way to resolve this issue.

---

<sup>11</sup> OJ L 9, 14.1.2009, p. 12.

16. To introduce an obligation for the Commission to submit to the Council, every five years and for the first time by the end 2015, a report on the application of the Energy Taxation Directive and, where appropriate, a modification proposal (see Article 1, point (21) of the proposal). The report by the Commission shall, inter alia, examine the minimum level of CO<sub>2</sub>-related taxation in the light of the evolution of the market price in the EU of the emission allowances, the impact of innovation and technological developments (as regards energy efficiency, the use of electricity in transport, the use of alternative fuels such as biofuels and hydrogen, the impact of Carbon Capture and Storage, etc.) and the justification for the tax exemptions and reductions laid down in this Directive. As regards the exemptions and reductions, particular attention should be paid to the exemptions for energy products used in air and maritime transport (Article 14(1)(b) and (c) of the ETD) respectively taking into account their treatment under the EU ETS and the results of international negotiations within the IMO (International Maritime Organisation) on the use of global market-based instrument internalising the external cost of CO<sub>2</sub> emissions, to the exemption for shore-side electricity (proposed Article 14(4) of the ETD) and to the impact on households. In any event, the list of sectors or sub-sectors deemed to be exposed to a significant risk of carbon leakage for the purposes of Article 14a of this Directive shall be the subject of regular review, in particular taking into account the availability of emerging evidence (see point 2 above).

- **Legal basis**

Treaty on the Functioning of the European Union, in particular Article 113 thereof.

- **Subsidiarity principle**

The proposal falls under shared Union and Member State competence. Therefore, the subsidiarity principle applies. Article 113 of the Treaty on the Functioning of the European Union provides that the Council shall adopt provisions for the harmonisation of legislation concerning excise duties to the extent that such harmonisation is necessary to ensure the establishment and the functioning of the internal market.

The ETD revision and its timing need to be seen in the broader context of the EU energy and climate change agenda. The EU is currently setting the framework of legislation which should enable the ambitious 2020 targets to be reached. The objective to bring the ETD more closely in line with the objectives and goals can only be implemented by means of an act adopted by the Union, amending the ETD.

- **Proportionality principle**

The proposal complies with the proportionality principle for the following reasons.

The objectives of the current review are best achieved by amending the current Directive to the effect explained above. The proposal is mainly concerned with some essential components of the Directive: the structure of taxation and the relationship between the respective tax treatment of the various energy sources.

The proposal is in all respects limited to what is necessary in order to achieve the objectives pursued.

- **Choice of instruments**

Proposed instruments: Directive. In this area already covered by an existing Directive, Member State should continue to retain an important margin of flexibility, as explained above. Other means than a Directive amending Directive 2003/96/CE would thus be inadequate.

#### **4. BUDGETARY IMPLICATIONS**

The proposal has no implications for the budget of the Union.

Proposal for a

**COUNCIL DIRECTIVE**

**amending Directive 2003/96/EC restructuring the Community framework for the taxation of energy products and electricity**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 113 thereof,

Having regard to the proposal from the European Commission<sup>12</sup>,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Parliament<sup>13</sup>,

Having regard to the opinion of the European Economic and Social Committee<sup>14</sup>,

Acting in accordance with a special legislative procedure,

Whereas:

- (1) Council Directive 2003/96/EC<sup>15</sup> was adopted in order to ensure the proper functioning of the internal market as regards the taxation of energy products and electricity. In accordance with Article 6 of the Treaty, environmental protection requirements have been integrated into the terms of that Directive, in the light, in particular, of the Kyoto protocol.
- (2) It is necessary to ensure that the internal market continues to function properly in a context of new requirements relating to the limitation of climate change, to the use of renewable energy sources and to energy savings, as endorsed by the Presidency Conclusions of the European Council of 8-9 March 2007 and of 11-12 December 2008.
- (3) Taxation related to CO<sub>2</sub> emissions can be a cost-effective means for Member States to achieve the reductions of greenhouse gasses necessary according to Decision 406/2009/EC of the European Parliament and the Council of 23 April 2009 on the effort of Member States to reduce their greenhouse gas emissions to meet the Union's

---

<sup>12</sup> OJ C , , p. .

<sup>13</sup> OJ C , , p. .

<sup>14</sup> OJ C , , p. .

<sup>15</sup> OJ L 283, 31.10.2003, p. 51.

greenhouse gas emission reduction commitments up to 2020<sup>16</sup> as regards sources not covered by the Union scheme under Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC<sup>17</sup>. In view of the potential role of CO<sub>2</sub>-related taxation, the proper functioning of the internal market requires common rules on that taxation.

- (4) Member States should, however, be able, as hitherto, to use energy taxation on heating fuels, motor fuels and electricity for a variety of purposes not necessarily nor specifically or exclusively related to the reduction of greenhouse gases.
- (5) Therefore, provision should be made for energy taxation to consist of two components, CO<sub>2</sub>-related taxation and general energy consumption taxation. In order for energy taxation to adapt to the operation of the Union scheme under Directive 2003/87/EC Member States should be required to explicitly distinguish between those two components. This would also allow distinct treatment of fuels that are biomass or made from biomass.
- (6) Each of those components should be calculated on the basis of objective criteria, allowing for equal treatment of different energy sources. For the purposes of CO<sub>2</sub>-related taxation, reference should be made to CO<sub>2</sub>-emissions caused by the use of each energy product concerned, using the reference CO<sub>2</sub> emission factors set out in Commission Decision 2007/589/EC of 18 July 2007 establishing guidelines for the monitoring and reporting of greenhouse gas emissions pursuant to Directive 2003/87/EC of the European Parliament and of the Council<sup>18</sup>. For the purposes of general energy consumption taxation, reference should be made to the energy content of the various energy products and of electricity as referred to in Directive 2006/32/EC of the European Parliament and of the Council of 5 April 2006 on energy end-use efficiency and energy services and repealing Council Directive 93/76/EEC<sup>19</sup>. In this context, account should be taken of the environmental advantages of biomass or products made of biomass. These products should be taxed on the basis of the CO<sub>2</sub> emission factors specified in Decision 2007/589/EC for biomass or products made of biomass and of their energy content as specified in Annex III to Directive 2009/28/EC. Biofuels and bioliquids defined in Article 2(h) and (i) of Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources<sup>20</sup> are by far the most important category concerned. Since the environmental advantages of these products vary, depending on whether they comply with the sustainability criteria laid down in Article 17 of that Directive, the specific reference values for biomass and products made of biomass should only apply where these criteria are met.
- (7) CO<sub>2</sub>-related taxation should be adapted to the operation of Directive 2003/87/EC so as to complement it effectively. That taxation should apply to all uses, including those for purposes other than heating, of energy products causing CO<sub>2</sub> emissions in installations within the meaning of that Directive, provided that the installation concerned is not

---

<sup>16</sup> OJ L 140, 5.6.2009, p. 136.

<sup>17</sup> OJ L 275, 25.10.2003, p. 32.

<sup>18</sup> OJ L 229, 31.8.2007, p. 1.

<sup>19</sup> OJ L 114, 27.4.2006, p. 64.

<sup>20</sup> OJ L 140, 5.6.2009, p. 16.



subject to the emission trading scheme under that Directive. However, since the cumulative application of both instruments would not allow emission reductions beyond those attained, overall, through the emission trading scheme alone, but would merely increase the total cost of these reductions, CO<sub>2</sub> related taxation should not apply to consumption in installations subject to the Union scheme.

- (8) In the interest of fiscal neutrality, the same minimum levels of taxation should apply for each component of energy taxation, to all energy products put to a given use. Where equal minimum levels of taxation are thus prescribed, Member States should, also for reason of fiscal neutrality, ensure equal levels of national taxation on all products concerned. Where needed, transitional periods for the purposes of equalising those levels should be foreseen.
- (9) The minimum levels of CO<sub>2</sub>-related taxation should be fixed in the light of the national targets for Member States as laid down in Decision 406/2009/EC on the effort of Member States to reduce their greenhouse gas emissions to meet the Union's greenhouse gas emission reduction commitments up to 2020. Since that Decision recognises that efforts to reduce their greenhouse gas emissions should be fairly distributed between the Member States, transitional periods should be fixed for certain Member States.
- (10) The minimum levels of general energy consumption taxation should be developed, in general, on the basis of the current minimum levels of taxation. This also implies that the minimum level of general energy consumption taxation applicable to motor fuels should remain higher than for heating fuels.
- (11) It should be ensured that the minimum levels of taxation preserve their intended effects. Since CO<sub>2</sub>-related taxation complements the operation of Directive 2003/87/EC, the market price of the emission allowances should be closely monitored in the periodic review of the Directive, incumbent on the Commission. The minimum levels of general energy consumption taxation should at regular intervals be automatically aligned to take into account the evolution of their real value in order to preserve the current level of rate harmonisation; to reduce the volatility stemming from energy and food prices, this alignment should be made on the basis of the changes in the Union-wide harmonised index of consumer prices excluding energy and unprocessed food as published by Eurostat.
- (12) In the field of motor fuels, the more favourable minimum level of taxation applicable to gas oil, a product originally put to business use for the most part and thus traditionally taxed at a lower level, creates a distortive effect with regard to petrol, its main competing fuel. Article 7 of Directive 2003/96/EC therefore provides for the first steps of a gradual alignment to the minimum level of taxation applicable to petrol. It is necessary to complete this alignment and gradually move to a situation where gas oil and petrol are taxed at an equal level.
- (13) As regards the possibility for Member States to apply a lower level of taxation to commercial than to non-commercial use of gas oil as motor fuel, this provision would appear to be no longer compatible with the requirement to improve energy efficiency and the need to address the growing environmental impact of transport and should therefore be deleted. Article 9(2) of Directive 2003/96/EC authorises certain Member States to apply a reduced rate on heating gas oil. That provision is no longer

compatible with the proper functioning of the internal market and with the wider objectives of the Treaty. It should therefore be deleted.

- (14) There is a need to limit the potential cost impact of CO<sub>2</sub>-related taxation on the sectors or sub-sectors deemed to be exposed to a significant risk of carbon leakage in the meaning of Article 10a(13) of Directive 2003/87/EC. Accordingly, it is appropriate to provide for corresponding transitional measures which, however, should also preserve the environmental effectiveness of CO<sub>2</sub>-related taxation.
- (15) Article 5 of Directive 2003/96/EC permits the application of differentiated rates of taxation in certain cases. However, in order to ensure the consistency of the CO<sub>2</sub> price signal, the possibility for Member States to differentiate national rates should be restricted to general energy consumption taxation. Moreover, the possibility to apply a lower level of taxation to motor fuel used by taxis is no longer compatible with the objective of policies promoting alternative fuels and energy carriers and the use of cleaner vehicles in urban transport and should thus be removed.
- (16) The rules on optional tax reductions and exemptions contained in Article 15 of Directive 2003/96/EC should be adapted in the light of experience gathered and of the new framework created by this Directive. The possibility for Member States to apply those optional reductions and exemptions should as much as possible be limited to general energy consumption taxation in order to establish a comprehensive and consistent CO<sub>2</sub> price signal outside the Union emission trading scheme.
- (17) Exemption or reductions to the benefit of households and charitable organisations may form part of social measures defined by Member States. The possibility to apply such exemptions or reductions should, for reasons of equal treatment between energy sources, be extended to all energy products used as heating fuel and electricity. In order to ensure that their impact on the internal market remains limited, such exemptions and reductions should be applied only to non-business activities.
- (18) In the case of liquefied petroleum gas (LPG) and natural gas used as propellants, advantages in the form of lower minimum levels of general energy consumption taxation or the possibility to exempt those energy products from taxation are no longer justified, in particular in the light of the need to increase the market share of renewable energy sources and should therefore be removed in the medium term.
- (19) Directive 2003/96/EC obliges Member States to exempt from taxation fuel used for navigation in Community waters as well as electricity produced on board a craft, including while at berth in a port. Moreover, Member States may extend this favourable tax treatment to inland waterways. In some harbours a cleaner alternative exists with the use of shore-side electricity which, however, is taxable. In order to set a first incentive for the development and application of this technology, pending the adoption of a more comprehensive framework in the matter, Member State should exempt the use of shore-side electricity by ships while at berth in a port from energy taxation. This exemption should apply during a period long enough in order not to discourage port operators from making the necessary investments but at the same time be time-limited in such a way that its maintenance, in full or in part, is made subject to a new decision in due time.

- (20) Article 15(3) of Directive 2003/96/EC allows Member States to apply to agricultural, horticultural and piscicultural works as well as to forestry not only the provisions generally applicable to business uses but also a level of taxation down to zero. An examination of that option has revealed that as far as general energy consumption taxation is concerned its maintenance would be contrary to the Union's wider policy objectives unless it is linked to a counterpart ensuring advances in the field of energy efficiency. As regards CO<sub>2</sub> related taxation the treatment of the sectors concerned should be aligned to the rules applying to industrial sectors.
- (21) The general rules introduced by this Directive take account of the specificities of fuels that are biomass or made of biomass complying with the sustainability criteria laid down in Article 17 of Directive 2009/28/EC with regard both to their contribution to the CO<sub>2</sub>-balance and to their lower energy content per quantitative unit, as compared to some of the competing fossil fuels. Consequently, the provisions in Directive 2003/96/EC authorising reductions or exemptions for those fuels should be removed in the medium term. For the interim period, it should be ensured that the application of these provisions is made consistent with the general rules introduced by this Directive. Biofuels and bioliquids defined in Article 2(h) and (i) of Directive 2009/28/EC should therefore only benefit from additional tax advantages applied by Member States if they fulfil the sustainability criteria laid down in Article 17 of this Directive.
- (22) In the absence of a more far-reaching harmonisation in the area of heating fuels used for business purposes, Member States with levels of taxation above the minimum levels prescribed in that area should continue to be able to provide for certain reductions. The applicable conditions should distinguish between general energy consumption taxation and CO<sub>2</sub>-related taxation, since those two elements pursue different objectives. Furthermore, it should be made clear that references to tradable permit schemes in Article 17 of Directive 2003/96/EC do not include the Union scheme under Directive 2003/87/EC.
- (23) In view of their particular administrative structure and under certain conditions, Spain and France should be allowed to apply regionally higher levels of general energy consumption taxation to energy products and electricity.
- (24) Directive 2003/96/EC should be aligned to Council Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC<sup>21</sup>.
- (25) The list of energy products in Articles 2(1) and 20(1) of Directive 2003/96/EC should be updated so as to include certain biofuels, in order to ensure a unified and standardised treatment of these biofuels and reference should be made in Article 2(5) of Directive 2003/96/EC to the version presently applicable of the combined nomenclature. Taking into account the risk of tax evasion, avoidance or abuse they represent, products under CN code 3811 should be made subject to the control and movement provisions of Directive 2008/118/EC.
- (26) In order to ensure free movement whilst at the same time respecting security requirements applicable to commercial motor vehicles and special containers, the definition of standard tanks of such vehicles in Article 24 of Directive 2003/96/EC

---

<sup>21</sup> OJ L 9, 14.1.2009, p. 12.

should be updated so as to reflect the fact that fuel tanks are not exclusively fitted to commercial vehicles by their manufacturer.

- (27) Since certain transitional provisions of Directive 2003/96/EC have become obsolete, they should be deleted.
- (28) Every five years and for the first time by the end of 2015, the Commission should report to the Council on the application of this Directive, examining in particular the minimum level of CO<sub>2</sub>-related taxation in the light of the evolution of the market price in the EU of the emission allowances, the impact of innovation and technological developments and the justification for the tax exemptions and reductions laid down in this Directive, including for fuel used for the purpose of air and maritime navigation. The list of sectors or sub-sectors deemed to be exposed to a significant risk of carbon leakage shall be the subject of regular review, in particular taking into account the availability of emerging evidence.
- (29) It is appropriate to amend certain provisions of Directive 2003/96/EC concerning implementing powers in order to ensure consistency with the provisions introduced by the Treaty on the Functioning of the European Union. This should be done through the granting of delegated powers to the Commission.
- (30) The Commission should be empowered to adopt delegated acts in accordance with Article 290 of the Treaty on the Functioning of the European Union in order to update the codes of the Combined Nomenclature for the products referred to in Directive 2003/96/EC, as well as the reference to the applicable Combined Nomenclature. It is necessary that the powers are delegated to the Commission for an indeterminate time, in order to allow the rules to be adjusted, if needed.
- (31) Since the objectives of the action to be taken, notably to ensure the proper functioning of the internal market in the context of new requirements in the fields of energy and environment, cannot be sufficiently achieved by the Member States and can therefore be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty of the European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary to achieve those objectives.
- (32) Directive 2003/96/EC should therefore be amended accordingly,

HAS ADOPTED THIS DIRECTIVE:

*Article 1*

Directive 2003/96/EC is amended as follows:

- (1) Article 1 is replaced by the following:

*"Article 1*

1. Member States shall impose taxation on energy products and electricity in accordance with this Directive.

2. Member States shall distinguish between CO<sub>2</sub>-related taxation and general energy consumption taxation.

CO<sub>2</sub>-related taxation shall be calculated in EUR/t of CO<sub>2</sub> emissions, on the basis of the reference CO<sub>2</sub> emission factors set out in point 11 of Annex I to Commission Decision 2007/589/EC of 18 July 2007 establishing guidelines for the monitoring and reporting of greenhouse gas emissions pursuant to Directive 2003/87/EC of the European Parliament and of the Council(\*). The CO<sub>2</sub> emission factors specified in this Decision for biomass or products made of biomass shall in the case of biofuels and bioliquids defined in Article 2(h) and (i) of Directive 2009/28/EC only apply where the product concerned complies with the sustainability criteria laid down in Article 17 of Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources (\*\*). Where biofuels and bioliquids do not comply with those criteria, Member States shall apply the reference CO<sub>2</sub> emission factor for the equivalent heating fuel or motor fuel for which minimum levels of taxation are specified in this Directive.

General energy consumption taxation shall be calculated in EUR/GJ on the basis of net calorific value of the energy products and electricity as set out in Annex II to Directive 2006/32/EC of the European Parliament and the Council of 5 April 2006 on energy end-use efficiency and energy services and repealing Council Directive 93/76/EEC (\*\*\*). In the case of biomass or products made of biomass the reference values shall be those set out in Annex III to Directive 2009/28/EC. However, in the case of biofuels and bioliquids defined in Article 2(h) and (i) of Directive 2009/28/EC, these reference values shall only apply where the product complies with the sustainability criteria laid down in Article 17 of this Directive. In this case, they shall apply both to motor fuels and heating fuels. Where biofuels and bioliquids do not comply with these criteria, Member States shall apply the reference values for the equivalent heating fuel or motor fuel for which minimum levels of taxation are specified in this Directive.

Where Directive 2006/32/EC, Decision 2007/589/EC or Directive 2009/28/EC, as the case may be, do not contain an emission factor and/or net calorific value for the product concerned, Member States shall refer to relevant available information on its CO<sub>2</sub> emission factor and/or net calorific value.

For the purpose of this Directive 'biomass' shall mean the biodegradable fraction of products, waste and residues from biological origin from agriculture (including vegetal and animal substances), forestry and related industries including fisheries and aquaculture, as well as the biodegradable fraction of industrial and municipal waste.

3. Where part of an energy product consists of biomass or products made of biomass, CO<sub>2</sub> emission factors and net calorific value relevant to this part shall be determined in accordance with paragraph 2, independently from the CN code under which the energy product falls as a whole.
4. Unless otherwise specified, the provisions of this Directive shall apply both to CO<sub>2</sub>-related taxation and to general energy consumption taxation.

(\* ) OJ L 229, 31.8.2007, p. 1.

(\*\* ) OJ L 140, 5.6.2009, p. 16.

(\*\*\*) OJ L 114, 27.4.2006, p. 64."

(2) Article 2 is amended as follows:

(a) Paragraph 1 is amended as follows:

(i) Point (h) is replaced by the following:

"(h) falling within CN codes 2909 19 10 and 3824 90 91;"

(ii) The following points (i) and (j) are added:

"(i) falling within CN codes 2207, 2208 90 91 and 2208 90 99 if these are intended for use as heating fuel or motor fuel and are denatured in accordance with Article 27(1)(a) and (b) of Directive 92/83/EC;

(j) falling within CN codes 2909 19 90, 3823 19 90 and 3824 90 97, if these are intended for use as heating fuel or motor fuel."

(b) Paragraphs 3, 4 and 5 are replaced by the following:

"3. When intended for use, offered for sale or used as motor fuel or heating fuel, energy products other than those for which minimum levels of taxation are specified in this Directive shall be taxed according to use, at the rates for the equivalent heating fuel or motor fuel, calculated in accordance with Article 1(2) and (3).

Products other than energy products, if intended for use, offered for sale or used as motor fuel, shall be taxed at the rates for the equivalent motor fuel, calculated in accordance with Article 1(2) and (3).

Additives and extenders to motor fuels, other than water, shall be taxed at the rates for the equivalent motor fuel.

Hydrocarbons other than those listed in paragraph 1 and intended for use, offered for sale or used for heating purposes shall be taxed at the rates for the equivalent energy product, in accordance with Article 1(2) and (3). This subparagraph shall not apply to peat.

4. CO<sub>2</sub>-related taxation shall, subject to Article 14(1)(d) of this Directive, apply to uses of energy products giving rise to carbon dioxide emissions from installations as defined in Article 3(e) of Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC(\*), whether or not those installations reach the threshold values indicated in Annex I to that Directive.

Where energy products are used according to the first subparagraph, for a purpose other than as motor fuel, they shall be treated as heating fuel for the purposes of this Directive.

5. References in this Directive to codes of the Combined Nomenclature shall be to those of Commission Regulation (EC) No 861/2010 of 5 October 2010

amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff(\*\*).

Where the Regulation referred to in the first subparagraph is replaced or where an amendment to the Combined Nomenclature necessitates a modification of the codes referred to in this Directive, the Commission shall adopt a delegated act in accordance with Article 27 and subject to the conditions of Articles 27a and 27b in order to modify the codes of the Combined Nomenclature of the products referred to in this Directive or in order to modify the reference provided for in the first subparagraph so as to align it to the applicable version of the Combined Nomenclature.

That delegated act must not result in any changes in the minimum tax rates applied in this Directive or to the addition or removal of any energy products and electricity.

---

(\*) OJ L 275, 25.10.2003, p.32.

(\*\*) OJ L 284, 29.10.2010, p. 1."

(c) The following paragraph 6 is added:

"6. For the purposes of points (a), (d), (i) and (j) of paragraph 1 of this Article, and points (a), (g), (i) and (j) of Article 20(1), products destined for supply shall be considered to be intended for use as heating fuel or motor fuel when the supplier is aware, or should reasonably be aware, that the recipient intends to use the products as heating fuel or motor fuel. Products referred in point (a) of paragraph 1 of this Article and point (a) of Article 20(1) shall not be considered to be intended for use as heating fuel or motor fuel if they are supplied to a producer of goods referred to in point (h) of paragraph 1 of this Article and point (h) of Article 20(1)."

(3) Article 3 is replaced by the following:

*"Article 3*

Without prejudice to Article 2(4), this Directive shall not apply to:

- (a) output taxation of heat and the taxation of products falling within CN-codes 4401 and 4402;
- (b) the following uses of energy products and electricity:
  - energy products for purposes other than as motor fuels or as heating fuels,
  - dual use of energy products

An energy product has a dual use when it is used both as heating fuel and for purposes other than as motor fuel and heating fuel. The use of energy products for chemical reduction and in electrolytic and metallurgical processes shall be regarded as dual use,

- electricity used principally for the purposes of chemical reduction and in electrolytic and metallurgical processes,
- mineralogical processes

"Mineralogical processes" shall mean the processes classified in the NACE nomenclature under code DI 23 "manufacture of other non-metallic mineral products" in Council Regulation (EC) No 1893/2006 of 20 December 2006 establishing the statistical classification of economic activities NACE Revision 2 and amending Council Regulations (EEC) No 3037/90 as well as certain EC Regulations on specific statistical domains\*).

However, Article 20 shall apply to energy products used as provided for in point (b) of the first paragraph of this Article.

---

(\* )OJ L 393, 30.12.2006, p. 1."

(4) Article 4 is amended as follows:

(a) Paragraph 2 is replaced by the following:

"2. For the purposes of this Directive "level of taxation" shall be the total charge levied in respect of all indirect taxes (except value added tax, hereinafter "VAT") calculated:

- (a) as regards CO<sub>2</sub>-related taxation, in accordance with the second subparagraph of Article 1(2), at the time of release for consumption;
- (b) as regards general energy consumption taxation, in accordance with the third subparagraph of Article 1(2), at the time of release for consumption."

(b) The following paragraphs 3 and 4 are added:

"3. Without prejudice to the exemptions, differentiations and reductions provided for in this Directive, Member States shall ensure that where equal minimum levels of taxation are laid down in Annex I in relation to a given use, equal levels of taxation are fixed for products put to that use. Without prejudice to Article 15(1)(i), for motor fuels referred to in Annex I Table A, this shall apply as from 1 January 2023.

For the purposes of the first subparagraph, each use for which a minimum level of taxation is identified, respectively, in Tables A, B and C in Annex I shall be considered to be a single use.

4. The minimum levels of general energy consumption taxation laid down in this Directive shall be adapted every three years starting from 1 July 2016 in order to take account of the changes in the harmonised index of consumer prices excluding energy and unprocessed food as published by Eurostat. The Commission shall publish the resulting minimum levels of taxation in the *Official Journal of the European Union*.



The minimum levels shall be adapted automatically, by increasing or decreasing the base amount in euro by the percentage change in that index over the three preceding calendar years. If the percentage change since the last adaptation is less than 0.5%, no adaptation shall take place."

(5) Article 5 is amended as follows:

(a) The introductory phrase is replaced by the following:

"Provided that they respect the minimum levels of taxation prescribed by this Directive, differentiated rates of general energy consumption taxation may be applied by Member States, under fiscal control, in the following cases:"

(b) The third indent is replaced by the following:

"– for the following uses: local public passenger transport (excluding taxis), waste collection, armed forces and public administrations, disabled people, ambulances;"

(6) Article 7 is replaced by the following:

*"Article 7*

As from 1 January 2013, from 1 January 2015 and from 1 January 2018, the minimum levels of taxation applicable to motor fuels shall be fixed as set out in Annex I, Table A."

(7) In Article 8, paragraph 1 is replaced by the following:

"1. As from 1 January 2013, the minimum levels of taxation applicable to products used as motor fuels for the purposes set out in paragraph 2 of this Article shall be fixed as set out in Annex I, Table B."

(8) Article 9 is replaced by the following:

*"Article 9*

As from 1 January 2013, the minimum levels of taxation applicable to heating fuels shall be fixed as set out in Annex I, Table C."

(9) Article 10 is replaced by the following:

*"Article 10*

As from 1 January 2013, the minimum levels of taxation applicable to electricity shall be fixed as set out in Annex I Table D."

(10) In Article 12, paragraph 2 is replaced by the following:

"2. When volume units are applied, the volume shall be measured at a temperature of 15°C."

(11) Article 14 is amended as follows:

(a) Paragraph 1 is amended as follows:

(i) the introductory phrase is replaced by the following:

"In addition to the general provisions set out in Council Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC(\*) on exempt uses of taxable products, and without prejudice to other Union provisions, Member States shall exempt the following from taxation under conditions which they shall lay down for the purpose of ensuring the correct and straightforward application of such exemptions and of preventing any evasion, avoidance or abuse:

---

(\*) OJ L 9, 14.1.2009, p.12."

(ii) in point (a), the second sentence is replaced by the following:

"However, Member States may, for reasons of environmental policy other than the reduction of CO<sub>2</sub> emissions, subject these products to taxation without having to respect the minimum levels of taxation laid down in this Directive."

(iii) the following points (d) and (e) are added:

"(d) as regards CO<sub>2</sub>-related taxation, energy products used for activities subject to, and not excluded from, the Union scheme within the meaning of Directive 2003/87/EC;

(e) until 31 December 2020, electricity directly provided to vessels berthed in ports."

(b) The following paragraph 3 is added:

"3. In the case of uses referred to in point (a) of paragraph 1, except uses for producing electricity on board a craft, the exemption shall apply only from general energy consumption taxation."

(12) The following Article 14a is inserted:

*"Article 14a*

1. Until 31 December 2020, Member States shall provide a credit concerning CO<sub>2</sub>-related taxation with respect to the use of energy products by installations belonging to sectors or sub-sectors deemed to be exposed to a significant risk of carbon leakage.
2. The amount of the tax credit shall correspond to the median annual consumption of energy products, expressed in gigajoules (GJ), of the installation during the reference period, for purposes other than those referred to in Article 7, multiplied by 0,00561 and by the minimum level of CO<sub>2</sub>-related taxation as laid down in Annex I, Table C.

The reference period referred to in the first sentence of this paragraph shall be either the period from 1 January 2005 to 31 December 2008 or the period from 1 January 2009 to 31 December 2010. The amount of the tax credit shall not exceed the CO<sub>2</sub>-related tax on the use of energy products by the installation during the period concerned.

3. For installations that have not been in operation during the reference period, Member States shall base the level of the tax credit on the installed capacity of the installation multiplied by an average capacity utilisation factor applying the methodology as laid down in Commission Decision XXX on determining transitional Union-wide rules for harmonised free allocations pursuant to Article 10a of Directive 2003/87/EC(\*).
4. Where a Member State applies a level of CO<sub>2</sub>-related taxation exceeding the minimum level prescribed by this Directive, it may, for the purposes of determining the amount of the tax credit under paragraph 2, refer to a level of CO<sub>2</sub>-related taxation up to the national level.
5. For the purposes of paragraphs 1 to 4, "sectors or sub-sectors deemed to be exposed to a significant risk of carbon leakage" shall be those that have been determined as such on the basis of Article 10a(13) of Directive 2003/87/EC.

---

(\*) OJ L

(13) Article 15 is amended as follows:

(a) Paragraph 1 is amended as follows:

(i) point (h) and (i) are replaced by the following:

"(h) energy products used as heating fuel and electricity if used by households and/or by organisations recognised as charitable by the Member State concerned. In the case of such charitable organisations, Member States shall confine the exemption or reduction to use for the purpose of non-business activities. Where mixed use takes place, taxation shall apply in proportion to each type of use. If a use is insignificant, it may be treated as nil;

(i) Until 1 January 2023, natural gas and LPG used as propellants;"

(ii) the following subparagraph is added:

"Points (a) to (e) and (g) only apply for general energy consumption taxation."

(b) Paragraph 3 is replaced by the following:

"3. Member States may apply a level of general energy consumption taxation down to zero on the consumption of energy products and electricity used for agricultural, horticultural, aquacultural works and in forestry. The beneficiaries shall be subject to arrangements that must lead to increased energy efficiency broadly equivalent to those that would have been achieved if the standard Union minimum rates had been observed."

(1) Article 16 is amended as follows:

(a) Paragraph 1 is amended as follows:

(i) the introductory phrase is replaced by the following:

"Until 1 January 2023, Member States may, without prejudice to paragraph 5 of this Article, apply an exemption or a reduced rate of general energy consumption taxation under fiscal control on the taxable products referred to in Article 2 of this Directive where such products are made up of, or contain, one or more of the following products and where, as far as biofuels and bioliquids defined in Article 2(h) and (i) of Directive 2009/28/EC are concerned, these products comply with the sustainability criteria laid down in Article 17 of that Directive:"

(ii) the third subparagraph is deleted.

(b) Paragraph 4, 6 and 8 are deleted.

(14) Articles 17 and 18 are replaced by the following:

"Article 17

1. Provided the minimum levels of taxation prescribed in this Directive are respected on average for each business, Member States may apply tax reductions from general energy consumption taxation to energy products used for heating purposes or for the purposes of Article 8(2)(b) and (c) and on electricity in the following cases:

(a) in favour of energy-intensive business

An 'energy-intensive business' shall mean a business entity, as referred to in Article 11, where either the purchases of energy products and electricity amount to at least 3,0 % of the production value or the national energy tax payable amounts to at least 0,5 % of the added value. Within this definition, Member States may apply more restrictive concepts, including sales value, process and sector definitions.

'Purchases of energy products and electricity' shall mean the actual cost of energy purchased or generated within the business. Only electricity, heat and energy products that are used for heating purposes or for the purposes of Article 8(2)(b) and (c) are included. All taxes are included, except deductible VAT.

'Production value' shall mean turnover, including subsidies directly linked to the price of the product, plus or minus the changes in stocks of finished products, work in progress and goods and services purchased for resale, minus the purchases of goods and services for resale.

'Added value' shall mean the total turnover liable to VAT including export sales minus the total purchases liable to VAT including imports;

(b) where agreements are concluded with business entities as referred to in Article 11 or associations of such business entities, or where tradable permit schemes or equivalent measures are implemented, as far as they lead to improvements in energy efficiency.

2. Provided the minimum levels of taxation prescribed in this Directive are respected on average for each business, Member States may apply tax reductions from CO<sub>2</sub>-related taxation to energy products used for heating purposes or for the purposes of Article 8(2)(b) and (c) where agreements are concluded with business entities as referred to in Article 11 or associations of such business entities, or where tradable permit schemes or equivalent measures are implemented, as far as they lead to objectives concerning the reduction of CO<sub>2</sub> emissions.
3. For the purposes of paragraphs 1 and 2, 'tradable permit schemes' shall mean tradable permit schemes other than the Union scheme within the meaning of Directive 2003/87/EC.

### *Article 18*

1. Notwithstanding Article 4(3), Spain may provide that the levels of the general energy consumption taxation applied by any Autonomous Community may be higher than the corresponding national levels of taxation (regional differentiation). The applicable rules have to meet the following conditions:

(a) the level of taxation applied by any Autonomous Community must not exceed the corresponding national level of taxation by more than 15%;

(b) where during a movement of energy products under a duty suspension arrangement to Spain from another Member State, an irregularity has occurred or is deemed to have occurred in Spain, within the meaning of Article 10 of Directive 2008/118/EC involving the chargeability of excise duty, the person who guaranteed the payment in accordance with Article 18 of that Directive is not to be held liable to pay the difference between the level of taxation applied by any Autonomous Community and the national level, unless that person participated in the irregularity or offence.

2. Notwithstanding Article 4(3), France may provide that the levels of the general energy consumption taxation applied at the level of the French regions may be higher than the corresponding national levels of taxation (regional differentiation). The applicable rules have to meet the following conditions:

(a) The level of taxation applied by any regional authority must not exceed the corresponding national level of taxation by more than 15%;

(b) Where during a movement of energy products under a duty suspension arrangement to France from another Member State, an irregularity has occurred or is deemed to have occurred in France, within the meaning of Article 10 of Directive 2008/118/EC, involving the chargeability of excise duty, the person who guaranteed the payment in accordance with Article 18 of that Directive is not to be held liable to pay the difference between the level of taxation applied by any regional authority and the national level, unless that person participated in the irregularity or offence.

3. Portugal may apply levels of general energy consumption taxation on energy products and electricity consumed in the Autonomous Regions of the Azores and Madeira lower than the minimum levels of taxation laid down in this Directive in order to compensate for the transport costs incurred as a result of the insular and dispersed nature of these regions.

4. Greece may apply levels of general energy consumption taxation up to EUR 0.6 per GJ lower than the minimum levels laid down in this Directive on gas oil used as propellant and on petrol consumed in the departments of Lesbos, Chios, Samos, the Dodecanese and the Cyclades and on the following islands in the Aegean: Thasos, North Sporades, Samothrace and Skiros.

5. Bulgaria, the Czech Republic, Estonia, Latvia, Lithuania, Hungary, Poland, Romania and Slovakia may, for uses referred to in Articles 8 and 9, apply a transitional period until 1 January 2021 to introduce CO<sub>2</sub>-related taxation. If the Union decides that the levels of greenhouse gas emissions be reduced by 2020 by more than 20% compared to the levels attained in 1990, the Commission shall examine the application of these transitional periods and, if appropriate, present a proposal with a view to shortening them and/or modifying the minimum levels of CO<sub>2</sub>-related taxation as set out in Annex I."

(15) Articles 18a and 18b are deleted.

(16) Article 20 is replaced by the following:

"Article 20

1. Only the following energy products shall be subject to the provisions of Chapters III and IV of Directive 2008/118/EC:

(a) products falling within CN codes 1507 to 1518, if these are intended for use as heating fuel or motor fuel;

(b) products falling within CN codes 2707 10, 2707 20, 2707 30 and 2707 50;

(c) products falling within CN codes 2710 11 to 2710 19 69. However, for products falling within CN codes 2710 11 21, 2710 11 25 and 2710 19 29, Chapters III and IV of Directive 2008/118/EC shall apply only to bulk commercial movements;

(d) products falling within CN codes 2711 (except 2711 11, 2711 21 and 2711 29);

(e) products falling within CN code 2901 10;

(f) products falling within CN codes 2902 20, 2902 30, 2902 41, 2902 42, 2902 43 and 2902 44;

(g) products falling within CN code 2905 11 00, which are not of synthetic origin, if these are intended for use as heating fuel or motor fuel;

(h) products falling within CN codes 2909 19 10 and 3824 90 91;

(i) products falling within CN codes 2207, 2208 90 91 and 2208 90 99 if these are intended for use as heating fuel or motor fuel and are denatured in accordance with Article 27(1)(a) and (b) of Directive 92/83/EC;

(j) products falling within CN codes 2909 19 90, 3823 19 90, and 3824 90 97, if these are intended for use as heating fuel or motor fuel;

(k) products falling within CN code 3811.

2. Member States may, pursuant to bilateral arrangements, dispense with some or all of the provisions of Chapters III and IV of Directive 2008/118/EC in respect of some or all of the products referred to in paragraph 1 of this Article, insofar as they are not covered by Articles 7, 8 and 9 of this Directive. Such arrangements shall not affect Member States which are not party to them. All such bilateral arrangements shall be notified to the Commission, which shall inform the other Member States."

(17) Article 21 is amended as follows:

(a) In paragraph 1, the words "Directive 92/12/EEC" are replaced by "Directive 2008/118/EC";

(b) Paragraph 2 is deleted;

(c) In the first and fourth subparagraphs of paragraph 5, the words "For the purpose of applying Articles 5 and 6 of Directive 92/12/EEC are replaced by "For the purpose of applying Articles 2 and 7 of Directive 2008/118/EC".

(18) In Article 24, paragraph 2 is replaced by the following:

"2. For the purposes of this Article,

'standard tanks' shall mean:

- the tanks permanently fixed to a motor vehicle by the manufacturer or by a third party and which, according to the registration documents or the certificate of roadworthiness of the vehicle, comply with the applicable technical and security requirements, and whose permanent fitting enables fuel to be used directly, both for the purpose of propulsion and, where appropriate, for the operation, during transport, of refrigeration systems and other systems. Gas tanks fitted to motor vehicles designed for the direct use of gas as a fuel and tanks fitted to the other systems with which the vehicle may be equipped shall also be considered to be standard tanks;
- the tanks permanently fixed to a special container by the manufacturer or a third party which, according to the registration documents of the container, comply with the applicable technical and security requirements, and whose permanent fitting enables fuel to be used directly for the operation, during transport, of the refrigeration systems and other systems with which special containers are equipped.

'Special container' shall mean any container fitted with specially designed apparatus for refrigeration systems, oxygenation systems, thermal insulation systems or other systems."

(19) Article 27 is replaced by the following:

#### *"Article 27*

#### *Exercise of the delegation*

1. The power to adopt delegated acts referred to in Articles 2(5) shall be conferred on the Commission for an indeterminate period of time.

2. As soon as the Commission adopts a delegated act, it shall notify it to the Council.

3. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in Articles 27a and 27b."

(20) The following Articles 27a, 27b and 27c are inserted:

*"Article 27a*

*Revocation of the delegation*

1. The delegation of powers referred to in Articles 2(5) may be revoked at any time by the Council.

2. Where the Council has commenced an internal procedure for deciding whether to revoke the delegation of powers, it shall endeavour to inform the Commission within a reasonable time before the final decision is taken, indicating the delegated powers which could be subject to revocation and possible reasons for a revocation.

3. The decision of revocation shall put an end to the delegation of the powers specified in that decision. It shall take effect immediately or at a later date specified therein. It shall not affect the validity of the delegated acts already in force. It shall be published in the *Official Journal of the European Union*.

*Article 27b*

*Objection to delegated acts*

1. The Council may object to a delegated act within a period of [three] months from the date of notification.

2. If, on the expiry of this period, the Council has not objected to the delegated act, it shall be published in the *Official Journal of the European Union* and shall enter into force on the date stated therein.

The delegated act may be published in the *Official Journal of the European Union* and enter into force before the expiry of that period if the Council has informed the Commission of its intention not to raise objections.

3. If the Council objects to a delegated act, it shall not enter into force. The Council shall state the reasons for objecting to the delegated act.

*Article 27c*

*Informing the European Parliament*

The European Parliament shall be informed of the adoption of delegated acts by the Commission of any objection formulated to them, or the revocation of the delegation of powers by the Council."

(21) Article 29 is replaced by the following:



### *"Article 29*

Every five years and for the first time by the end of 2015, the Commission shall submit to the Council a report on the application of this Directive and, where appropriate, a proposal for its modification.

The report by the Commission shall, inter alia, examine the minimum level of CO<sub>2</sub>-related taxation, the impact of innovation and technological developments, in particular as regards energy efficiency, the use of electricity in transport and the justification for the exemptions and reductions, including for fuel used for the purpose of air and maritime navigation, laid down in this Directive. The report shall take into account the proper functioning of the internal market, the real value of the minimum levels of taxation and the wider objectives of the Treaty.

In any event, the list of sectors or sub-sectors deemed to be exposed to a significant risk of carbon leakage for the purposes of Article 14a of this Directive shall be the subject of regular review, in particular taking into account the availability of emerging evidence."

(22) Annex I is replaced by the text in the Annex to this Directive.

(23) Annexes II and III are deleted.

### *Article 2*

1. Member States shall adopt and publish, by 31 December 2012 at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

They shall apply those provisions from 1 January 2013.

When Member States adopt the provisions referred to in the first and third subparagraphs, those provisions shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

### *Article 3*

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

### *Article 4*

This Directive is addressed to the Member States.

Done at Brussels,

*For the Council  
The President*

## ANNEX

### "ANNEX I

Table A. - Minimum levels of taxation applicable from 1 January 2013 to motor fuels for the purposes of Article 7

	CO <sub>2</sub> -related taxation	General energy consumption taxation	General energy consumption taxation	General energy consumption taxation
	1 January 2013	1 January 2013	1 January 2015	1 January 2018
Petrol CN codes 2710 11 31, 2710 11 41, 2710 11 45, 2710 11 49, 2710 11 51 and 2710 11 59	20 €/t CO <sub>2</sub>	9.6 €/GJ	9.6 €/GJ	9.6 €/GJ
Gas oil CN codes 2710 19 41 to 2710 19 49	20 €/t CO <sub>2</sub>	8.2 €/GJ	8.8 €/GJ	9.6 €/GJ
Kerosene CN codes 2710 19 21 and 2710 19 25	20 €/t CO <sub>2</sub>	8.6 €/GJ	9.2 €/GJ	9.6 €/GJ
LPG CN codes 2711 12 11 to 2711 19 00	20 €/t CO <sub>2</sub>	1.5 €/GJ	5.5 €/GJ	9.6 €/GJ
Natural gas CN codes 2711 11 00 and 2711 21 00	20 €/t CO <sub>2</sub>	1.5 €/GJ	5.5 €/GJ	9.6 €/GJ

Table B. - Minimum levels of taxation applicable from 1 January 2013 to motor fuels used for the purpose set out in Article 8(2)

	CO <sub>2</sub> -related taxation	General energy consumption taxation
Gas oil CN codes 2710 19 41 to 2710 19 49	20 €/t CO <sub>2</sub>	0.15 €/GJ
Kerosene CN codes 2710 19 21 and 2710 19 25	20 €/t CO <sub>2</sub>	0.15 €/GJ
LPG CN codes 2711 12 11 to 2711 19 00	20 €/t CO <sub>2</sub>	0.15 €/GJ
Natural gas CN codes 2711 11 00 and 2711 21 00	20 €/t CO <sub>2</sub>	0.15 €/GJ

Table C. – Minimum levels of taxation applicable from 1 January 2013 to heating fuels

	CO <sub>2</sub> -related taxation	General energy consumption taxation
Gas oil CN codes 2710 19 41 to 2710 19 49	20 €/t CO <sub>2</sub>	0.15 €/GJ
Heavy fuel oil CN codes 2710 19 61 to 2710 19 69	20 €/t CO <sub>2</sub>	0.15 €/GJ
Kerosene CN codes 2710 19 21 and 2710 19 25	20 €/t CO <sub>2</sub>	0.15 €/GJ
LPG CN codes 2711 12 11 to 2711 19 00	20 €/t CO <sub>2</sub>	0.15 €/GJ
Natural gas CN codes 2711 11 00 and 2711 21 00	20 €/t CO <sub>2</sub>	0.15 €/GJ
Coal and coke CN codes 2701, 2702 and 2704	20 €/t CO <sub>2</sub>	0.15 €/GJ

Table D. - Minimum levels of taxation applicable from 1 January 2013 to electricity

	CO <sub>2</sub> -related taxation	General energy consumption taxation
Electricity CN code 2716		0.15 €/GJ"

## LEGISLATIVE FINANCIAL STATEMENT FOR PROPOSALS

### 1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

#### 1.1. Title of the proposal/initiative

Review of Directive 2003/96/EC

#### 1.2. Policy area(s) concerned in the ABM/ABB structure<sup>22</sup>

14 05 Taxation Policy

#### 1.3. Nature of the proposal/initiative

The proposal/initiative relates to **a new action**

The proposal/initiative relates to **a new action following a pilot project/preparatory action**<sup>23</sup>

The proposal/initiative relates to **the extension of an existing action**

The proposal/initiative relates to **an action redirected towards a new action**

#### 1.4. Objectives

##### 1.4.1. *The Commission's multiannual strategic objective(s) targeted by the proposal/initiative*

Sustainable growth – for a resource efficient, greener and more competitive economy (Europe 2020)

##### 1.4.2. *Specific objective(s) and ABM/ABB activity(ies) concerned*

Specific objective No.3.

To develop new tax initiatives and actions to support EU policy objectives (for example in the field of environmental and energy policy)

ABM/ABB activity(ies) concerned

Title 14 Taxation and Customs Union; ABB 05 Taxation Policy

---

<sup>22</sup> ABM: Activity-Based Management – ABB: Activity-Based Budgeting.  
<sup>23</sup> As referred to in Article 49(6)(a) or (b) of the Financial Regulation.

### 1.4.3. *Expected result(s) and impact*

*Specify the effects which the proposal/initiative should have on the beneficiaries/groups targeted.*

Coherence of Energy Taxation Directive with the priorities of the Europe 2020 Strategy and coherence with Emission Trading System (ETS)

Environmentally-harmful incentives in current directive removed; positive incentives in favour of e.g. biofuels set.

A Contribution to the reduction of CO<sub>2</sub> emissions, increase of employment and economic growth.

Consistent treatment of energy sources in the Energy Taxation Directive and therefore creation of a real level playing field between different energy consumers.

### 1.4.4. *Indicators of results and impact*

*Specify the indicators for monitoring implementation of the proposal/initiative.*

CO<sub>2</sub>-price signal for sectors falling outside the Emission Trading System (ETS).

Real implicit tax rate on energy (ITR on energy)

## 1.5. **Grounds for the proposal/initiative**

### 1.5.1. *Requirement(s) to be met in the short or long term*

The EU has set itself a series of demanding, legally binding climate change and energy targets to be met by 2020. These are spelled out in the Europe 2020 Strategy setting as a priority of sustainable growth, more resource efficient, greener and more competitive economy.

### 1.5.2. *Added value of EU involvement*

Climate change and energy are issues of a European scale. Coordinated action is essential to reach the goals set in common in these areas.

### 1.5.3. *Lessons learned from similar experiences in the past*

n.a.

### 1.5.4. *Coherence and possible synergy with other relevant instruments*

The proposal establishes a framework for the use of CO<sub>2</sub> taxation in areas where the EU ETS does not apply, complementing the carbon price signal established by the ETS. Overlaps between both instruments will be avoided to ensure consistency with the EU ETS and avoid losses in cost-effective way.

The proposal contributes to the Europe 2020 strategy. In particular, it enables Member States to optimise the potential of the tax system to promote sustainable economic growth, encourage jobs and investment, and help meet our wider social and environmental goals.

#### 1.6. Duration and financial impact

The proposal has no financial impact on the EU.

Proposal/initiative of **limited duration**

–  Proposal/initiative in effect from [DD/MM]YYYY to [DD/MM]YYYY

–  Financial impact from YYYY to YYYY

Proposal/initiative of **unlimited duration**

– Implementation with a start-up period from YYYY to YYYY,

– followed by full-scale operation.

#### 1.7. Management mode(s) envisaged<sup>24</sup>

The proposal has no financial impact on the EU.

**Centralised direct management** by the Commission

**Centralised indirect management** with the delegation of implementation tasks to:

–  executive agencies

–  bodies set up by the Communities<sup>25</sup>

–  national public-sector bodies/bodies with public-service mission

–  persons entrusted with the implementation of specific actions pursuant to Title V of the Treaty on European Union and identified in the relevant basic act within the meaning of Article 49 of the Financial Regulation

**Shared management** with the Member States

**Decentralised management** with third countries

**Joint management** with international organisations (*to be specified*)

*If more than one management mode is indicated, please provide details in the "Comments" section.*

Comments

<sup>24</sup> Details of management modes and references to the Financial Regulation may be found on the BudgWeb site: [http://www.cc.cec/budg/man/budgmanag/budgmanag\\_en.html](http://www.cc.cec/budg/man/budgmanag/budgmanag_en.html)

<sup>25</sup> As referred to in Article 185 of the Financial Regulation.



## **2. MANAGEMENT MEASURES**

The proposal has no financial impact on the EU budget.

### **2.1. Monitoring and reporting rules**

*Specify frequency and conditions.*

### **2.2. Management and control system**

*2.2.1. Risk(s) identified*

*2.2.2. Control method(s) envisaged*

### **2.3. Measures to prevent fraud and irregularities**

*Specify existing or envisaged prevention and protection measures.*

**3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE**

The proposal has no financial impact on the EU.