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8.3.2012

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## **REPORT**

on the proposal for a Council Directive amending Directive 2003/96/EC restructuring the Community framework for the taxation of energy products and electricity  
(COM(2011)0169 – C7-0105/2011 – 2011/0092(CNS))

Committee on Economic and Monetary Affairs

Rapporteur: Astrid Lulling

### ***Symbols for procedures***

- \* Consultation procedure.
- \*\*\* Consent procedure
- \*\*\*I Ordinary legislative procedure (first reading)
- \*\*\*II Ordinary legislative procedure (second reading)
- \*\*\*III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

### ***Amendments to a draft act***

In amendments by Parliament, amendments to draft acts are highlighted in bold italics. Highlighting in normal italics is an indication for the relevant departments showing parts of the draft act which may require correction when the final text is prepared – for instance, obvious errors or omissions in a language version. Suggested corrections of this kind are subject to the agreement of the departments concerned.

The heading for any amendment to an existing act that the draft act seeks to amend includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend. Passages in an existing act that Parliament wishes to amend, but that the draft act has left unchanged, are highlighted in bold. Any deletions that Parliament wishes to make in such passages are indicated thus: [...].

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## **DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION**

**on the proposal for a Council Directive amending Directive 2003/96/EC restructuring the Community framework for the taxation of energy products and electricity (COM(2011)0169 – C7-0105/2011 – 2011/0092(CNS))**

**(Special legislative procedure – consultation)**

The European Parliament,

- having regard to the Commission proposal to the Council (COM(2011)0169),
  - having regard to Article 113 of the Treaty on the Functioning of the European Union, pursuant to which the Council consulted Parliament (C7-0105/2011),
  - having regard to the reasoned opinions submitted, within the framework of the Protocol (No 2) on the application of the principles of subsidiarity and proportionality, by the Bulgarian Parliament, the Spanish Congress of Deputies and the Spanish Senate, asserting that the draft legislative act does not comply with the principle of subsidiarity,
  - having regard to Rule 55 of its Rules of Procedure,
  - having regard to the report of the Committee on Economic and Monetary Affairs and the opinions of the Committee on Budgets, the Committee on the Environment, Public Health and Food Safety, the Committee on Industry, Research and Energy, the Committee on Transport and Tourism and the Committee on Agriculture and Rural Development (A7-0052/2012),
1. Approves the Commission proposal as amended;
  2. Calls on the Commission to alter its proposal accordingly, in accordance with Article 293(2) of the Treaty on the Functioning of the European Union;
  3. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;
  4. Asks the Council to consult Parliament again if it intends to amend the Commission proposal substantially;
  5. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

### **Amendment 1**

**Proposal for a directive – amending act**

**Recital 1**

*Text proposed by the Commission*

(1) Council Directive 2003/96/EC 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.

*Amendment*

(1) Council Directive 2003/96/EC 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. ***It is important that, pursuant to Article 9 of the Treaty on the Functioning of the European Union (TFEU), it is ascertained whether sufficient account is taken of protection of human health, for example in the context of air pollution.***

**Amendment 2**

**Proposal for a directive – amending act  
Recital 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***(1a) In addressing an issue as wide-ranging and crucial as energy taxation in the Union, consideration of climate and environmental policy imperatives, however necessary, is not sufficient. Energy policy and industrial policy aims constitute equally critical challenges for the Union. Furthermore, in order for the internal market to function in an adequate and efficient way in the area of energy, all Union initiatives and legislation relating to this area need to be continuously and carefully coordinated. Not only should the amendments to Directive 2003/96/EC be compatible with other energy-related policies, but those policies should also be appropriately adapted to the energy taxation framework. In particular, the existing problems within the EU Emissions Trading Scheme should be dealt with resolutely so that it can***

*function effectively. Any lack of coherence would be detrimental to the fulfilment of the long-term Union objectives of building smart, sustainable and inclusive growth.*

### Amendment 3

#### Proposal for a directive – amending act Recital 2

*Text proposed by the Commission*

(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.

*Amendment*

(2) It is necessary to ensure that the internal market ***functions in an optimum manner*** 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. ***Consistent treatment of energy sources under this Directive should therefore be guaranteed in order to provide a genuine level playing field for energy consumers regardless of the energy source used.***

### Amendment 4

#### Proposal for a directive – amending act Recital 2 a (new)

*Text proposed by the Commission*

*Amendment*

***(2a) Taxation of energy products should be approached in a technologically neutral manner in order to give new technologies the opportunity to develop.***

### Amendment 5

#### Proposal for a directive – amending act Recital 3

*Text proposed by the Commission*

(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 greenhouse gas emission reduction commitments up to 2020 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. 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.

*Amendment*

(3) Taxation related to CO<sub>2</sub> emissions **is generally** 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 greenhouse gas emission reduction commitments up to 2020 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. In view of the **present and** potential role of CO<sub>2</sub>-related taxation, the proper functioning of the internal market requires common rules on that taxation.

*Justification*

*Some Member States already have well-functioning and cost-effective CO<sub>2</sub>-related tax regimes in place.*

**Amendment 6**

**Proposal for a directive – amending act  
Recital 4 a (new)**

*Text proposed by the Commission*

*Amendment*

***(4a) Energy taxation should not cover energy recovery from waste and, in particular, the use of waste as an alternative fuel, given that Directive 2008/98/EC of the European Parliament and the Council of 19 November 2008 on waste<sup>1</sup> urges producers and holders of waste to dispose of waste in the most energy-efficient and resource-friendly manner possible and gives priority to***



*energy recovery over disposal.*

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<sup>1</sup> OJ L 312, 22.11.2008, p. 3.

## Amendment 7

### Proposal for a directive – amending act Recital 4 b (new)

*Text proposed by the Commission*

*Amendment*

***(4b) Member States should also retain the right to apply a level of general energy consumption taxation down to zero on the consumption of energy products and electricity used for agricultural, horticultural, and piscicultural works, and in forestry.***

## Amendment 8

### Proposal for a directive – amending act Recital 5

*Text proposed by the Commission*

*Amendment*

(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.

(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 ***in view of the advantages they offer as a source of renewable energy that is cheap and almost greenhouse-gas neutral, provided that they meet 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<sup>1</sup>. The Commission should submit a report to Parliament and the Council examining whether, in addition to CO<sub>2</sub> emissions, emissions of other harmful gases should also be taken into account with the aim of protecting public health.*

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<sup>1</sup> OJ L 140, 5.6.2009, p. 16.

## **Amendment 9**

### **Proposal for a directive – amending act Recital 6**

#### *Text proposed by the Commission*

(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. 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. 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

#### *Amendment*

(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. 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. 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 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.

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 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. ***As soon as sustainability criteria for biomass products other than biofuels and bioliquids are laid down in Directive 2009/28/EC, those specific reference values should be applied to biomass products other than biofuels only if they comply with the new sustainability criteria.***

## **Amendment 10**

### **Proposal for a directive – amending act Recital 7**

#### *Text proposed by the Commission*

(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 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>

#### *Amendment*

(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 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.

related taxation **must** not apply to **direct and indirect** consumption in installations subject to the Union scheme. **A double burden in the form of double taxation and double regulation would lead to distortions of competition and must be ruled out.**

## Amendment 11

### Proposal for a directive – amending act Recital 8

#### *Text proposed by the Commission*

(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.

#### *Amendment*

(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 **which take due account of Member States' specificities** should be foreseen.

## Amendment 12

### Proposal for a directive – amending act Recital 11

#### *Text proposed by the Commission*

(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**

#### *Amendment*

(11) It should be ensured that the minimum levels of taxation preserve their intended effects. **The minimum levels of general energy consumption taxation should for that purpose be examined at regular intervals.**

*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.*

### **Amendment 13**

**Proposal for a directive – amending act  
Recital 11 a (new)**

*Text proposed by the Commission*

*Amendment*

*(11a) Given the complex nature of the requirements which the two components of the new system, namely energy taxation and CO<sub>2</sub>-related taxation, are intended to meet, clear rules, which, in the interests of all consumers, are transparent and readily understandable, should be laid down at all levels in order to guarantee that the system can be properly administered.*

### **Amendment 14**

**Proposal for a directive – amending act  
Recital 12**

*Text proposed by the Commission*

*Amendment*

*(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*

*deleted*

*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.*

#### **Amendment 15**

##### **Proposal for a directive – amending act Recital 12 a (new)**

*Text proposed by the Commission*

*Amendment*

*(12a) Implementing the new tax structure will involve increasing the rate of taxation of diesel to bring it into line with that for petrol. This may call into question both the decision taken by the Union automobile industry to focus on clean, energy-efficient conventional combustion engines and the achievement of the Unions's CO<sub>2</sub> emissions reduction targets, since the CO<sub>2</sub> limit values set can be achieved only if a sufficient number of vehicles on the road are diesel powered. Appropriate flexible measures should be taken in order to ensure that the competitiveness of the automobile sector and the success of the CO<sub>2</sub> emissions reduction strategy in that sector are not endangered. Sales taxes, registration taxes and annual road use taxes should be harmonised and, as a matter of principle, set solely on the basis of a vehicle's CO<sub>2</sub> emissions.*

#### **Amendment 16**

##### **Proposal for a directive – amending act Recital 13**

*Text proposed by the Commission*

*Amendment*

(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

(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.

requirement to improve energy efficiency and the need to address the growing environmental impact of transport and should therefore be deleted. ***In order to make it possible for transport firms to adapt to the new rules, a transitional period ending in 2025 should be instituted.*** 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.

## Amendment 17

### Proposal for a directive – amending act Recital 14

#### *Text proposed by the Commission*

(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.

#### *Amendment*

(14) There is a need to limit the potential cost impact of ***the new tax structure*** on the sectors or sub-sectors deemed to be exposed to a significant risk of carbon leakage. Accordingly, it is appropriate to provide for corresponding measures which, however, should also preserve the environmental effectiveness of CO<sub>2</sub>-related taxation.

## Amendment 18

### Proposal for a directive – amending act Recital 14 a (new)

#### *Text proposed by the Commission*

#### *Amendment*

***(14a) Any restructuring of energy taxation should ensure that sectors not subject to the emissions trading scheme are not penalised in relation to sectors***

*that are covered by that scheme.*

## **Amendment 19**

### **Proposal for a directive – amending act Recital 15**

*Text proposed by the Commission*

(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.

*Amendment*

(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 ***oil-derived*** 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.

#### *Justification*

*Natural gas/bio methane is the alternative to oil derived fuels and has uniquely low emissions of toxic or carcinogenic substances, almost zero particulate emissions, no emissions of reactive hydrocarbons, reduced NOx emissions, as well as reduced noise, which makes it an ideal motor fuel in urban surroundings. The Expert Group of Future Transport Fuels report from 25th January 2011 states that methane should be promoted as one of the main alternative fuels in urban transport.*

## **Amendment 20**

### **Proposal for a directive – amending act Recital 16 a (new)**

*Text proposed by the Commission*

*Amendment*

***(16a) Since the introduction of electric and hybrid vehicles is key to easing dependence on non-renewable fuels in the transport sector, Member States should, for a limited period of time, have the***



***possibility of applying an exemption or reduction in the level of taxation to electricity utilised to charge such vehicles.***

### *Justification*

*Electrification is an important element in the process of making the transport sector sustainable. As the total emission impact of these vehicles is closely related to the cleanliness of the input electricity, they are not necessarily very environmentally-friendly in all Member States in the short run. In the long term, however, these very efficient technologies open up for the creation of truly sustainable transport systems.*

## **Amendment 21**

### **Proposal for a directive – amending act Recital 17**

#### *Text proposed by the Commission*

(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.***

#### *Amendment*

(17) Exemption or reductions to the benefit of households and charitable organisations ***prevent a correct price signal from being given, thereby taking away an important incentive to reduce energy bills and energy use.*** The possibility ***in Directive 2003/96/EC*** to apply such exemptions or reductions should ***therefore, after a long phase-out period, be removed. In Member States where this affects energy prices, low-income households and charitable organisations should be compensated via solid and comprehensive social measures.***

## **Amendment 22**

### **Proposal for a directive – amending act Recital 18**

#### *Text proposed by the Commission*

(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***

#### *Amendment*

(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 ***not***

*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*.

justified in the *long run* and should therefore be removed, *in particular in the light of the need to enable renewable fuels to increase their market share. However, since LPG and natural gas have a less harmful environmental impact than other fossil fuels and since their distribution infrastructure could be beneficial in the introduction of renewable alternatives, the advantages should be phased out step by step.*

## Amendment 23

### Proposal for a directive – amending act Recital 19

#### *Text proposed by the Commission*

(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 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.

#### *Amendment*

(19) Directive 2003/96/EC obliges Member States to exempt from taxation fuel used for *non-pleasure air and maritime* navigation. *Such exemptions are not in line with the aim of creating a level playing field among the various modes of transport. They should therefore be phased out. In order to safeguard the competitive position of Union businesses and industries, such a phase-out should preferably be done within the framework of international discussions. Discussions in the context of the IMO, the ICAO and the United Nations Framework Convention on Climate Change on imposing CO<sub>2</sub> reduction measures in the air and maritime sectors should be closely followed in this regard. In the absence of progress at an international level, the Commission should put forward legislative proposals to reduce CO<sub>2</sub> emissions in both sectors, taking into account the risk of carbon leakage and the competitiveness of the sectors. Such tax treatment should also be applicable to inland waterways. In some harbours a clean energy 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 *both to sea and to inland ports* 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.

## Amendment 24

### Proposal for a directive – amending act Recital 20

#### *Text proposed by the Commission*

(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.

#### *Amendment*

(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, *with the goal of ensuring the economic viability of these sectors which are already being hampered by demanding social, plant health and environmental requirements that are not sufficiently compensated for by the market. Despite this,* 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. *Such advances in energy efficiency should form part of a sufficiently long cycle and be subject to public planning and monitoring by public*

*bodies. Member States should provide technical guidance to the operators in these sectors if additional energy efficiency requirements related to reduced tax rates are applied. As regards CO<sub>2</sub> related taxation, the treatment of the sectors concerned should take into account the specific carbon capture and storage capacities and the risk of carbon leakage for each of the sectors and sub-sectors concerned, as well as the possible impact on their productivity and viability. The sectors producing biomass with high carbon sequestration potential should be exempted. It is essential that in regions subject to an exceptional capacity to produce energy from renewable sources, energy independence of their agricultural and breeding livestock activities are encouraged.*

## Amendment 25

### Proposal for a directive – amending act Recital 21

#### *Text proposed by the Commission*

(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. 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

#### *Amendment*

(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. 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 *that* Directive. ***That article implies***

17 of *this* Directive.

*that the sustainability criteria will be made more restrictive in 2017 and 2018. In order to fulfil the criteria, the greenhouse gas emission saving will from 1 January 2017 have to be at least 50 %. From 1 January 2018 the saving will have to be at least 60 % for products made in installations in which production started on or after 1 January 2017. As soon as sustainability criteria for biomass products other than biofuels and bioliquids are laid down in Directive 2009/28/EC, such products should benefit from additional tax advantages only if they comply with those new criteria.*

## Amendment 26

### Proposal for a directive – amending act Recital 28

*Text proposed by the Commission*

(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.

*Amendment*

(28) Every **three** years and for the first time by the end of 2015, the Commission should report to **the Parliament and** the Council on the application of this Directive, examining in particular **the minimum levels of general energy consumption taxation in order to ensure that they preserve their intended effects**, 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, **the impact on harmful or potentially harmful emissions other than CO<sub>2</sub>**, 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, **as well as developments in the use of biogas, natural gas and LGP in road transport. That report should include an overview of existing taxation provisions contained in bilateral air service agreements. The report should also**

*examine the impact on the setting of industrial policy priorities in the European car industry. A list of sectors or sub-sectors deemed to be exposed to a significant risk of carbon leakage shall be **drawn up and regularly reviewed**, in particular taking into account the availability of emerging evidence.*

#### *Justification*

*CO<sub>2</sub>-based taxation would have far-reaching environmental and taxation policy repercussions within the Union. The reporting obligation should therefore include Parliament. In order that policy guidance can be given, the reporting period needs to be shortened.*

#### **Amendment 27**

##### **Proposal for a directive – amending act**

##### **Article 1 – point 1**

Directive 2003/96/EC

Article 1 – paragraph 2 – subparagraph 2

##### *Text proposed by the Commission*

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

##### *Amendment*

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.

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. ***In accordance with the provisions of Directive 2009/28/EC, these sustainability criteria shall be made more restrictive in 2017 and 2018. In order to fulfill the criteria, the greenhouse gas emission saving shall from 1 January 2017 have to be at least 50 %. From 1 January 2018 the saving shall have to be at least 60 % for products made in installations in which production started on or after 1 January 2017.***

## Amendment 28

### Proposal for a directive – amending act

#### Article 1 – point 1

Directive 2003/96/EC

Article 1 – paragraph 4

#### *Text proposed by the Commission*

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.

#### *Amendment*

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. ***When sustainability criteria for biomass products other than biofuels and bioliquids are laid down in Directive 2009/28/EC, the reference CO<sub>2</sub> emission factors set out in point (11) of Annex I to Commission Decision 2007/589/EC and the net calorific reference values set out in Annex III to Directive 2009/28 shall be applied to such biomass products only if they comply with those sustainability criteria. Where such biomass products do not comply with those sustainability criteria, Member States shall apply the reference CO<sub>2</sub> emission factor and net calorific reference value for the equivalent heating or motor fuel for which minimum levels of taxation are***

*specified in this Directive.*

## **Amendment 29**

### **Proposal for a directive – amending act**

#### **Article 1 – point 2 – point b**

Directive 2003/96/EC

Article 2 – paragraph 4 a (new)

*Text proposed by the Commission*

*Amendment*

***4a. Member States shall ensure that the direct and indirect use of energy products in installations as defined in Directive 2003/87/EC or the direct and indirect use of energy products in installations taxed through national CO<sub>2</sub>-reduction measures are not subject to double taxation or double regulation.***

## **Amendment 30**

### **Proposal for a directive – amending act**

#### **Article 1 – point 3**

Directive 2003/96/EC

Article 3 – paragraph 1 – point a b (new)

*Text proposed by the Commission*

*Amendment*

***(ab) electricity used to pump water for irrigation;***

## **Amendment 31**

### **Proposal for a directive – amending act**

#### **Article 1 – point 3**

Directive 2003/96/EC

Article 3 – point b – second indent

*Text proposed by the Commission*

*Amendment*

– dual use of energy products

– ***energy-intensive industry and*** dual use of energy products



### *Justification*

*It is desirable to specify in the Directive that it is not to apply to energy-intensive industry, thus ensuring that the Directive treats all energy-intensive sectors of industry equally.*

### **Amendment 32**

#### **Proposal for a directive – amending act**

##### **Article 1 – point 3**

Directive 2003/96/EC

Article 3 – point b – indent 2 a (new)

*Text proposed by the Commission*

*Amendment*

***- waste used as alternative fuel or thermally recovered within the meaning of Article 3(15) and point (R1) of Directive 2008/98/EC.***

### *Justification*

*Imposing energy tax on thermally recovered waste - i.e. waste whose energy content released on burning is put to good use, thus replacing fossil fuels and conserving resources - runs counter to the resource-efficiency objective and the provisions laid down in the Waste Framework Directive 2008/98/EC.*

### **Amendment 33**

#### **Proposal for a directive – amending act**

##### **Article 1 – point 4 – point b**

Directive 2003/96/EC

Article 4 – paragraph 3

*Text proposed by the Commission*

*Amendment*

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***.

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 2025***.

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.

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.

***By 1 January 2025, the Commission shall make legislative proposals aimed at harmonising car purchase taxes, car registration taxes and car ownership taxes based on CO<sub>2</sub> emissions or shall issue a report explaining why it has not done so.***

## **Amendment 34**

### **Proposal for a directive – amending act**

#### **Article 1 – point 4 – point b**

Directive 2003/96/EC

Article 4 – paragraph 3 – subparagraph 3 a (new)

*Text proposed by the Commission*

*Amendment*

***In the case of natural gas and biomethane used as motor fuel, higher minimum levels of general energy consumption taxation shall apply only after an assessment, to be carried out by the Commission by 2023, of the implementation of the provisions of this Directive relating to the level of taxation applicable to natural gas in road transport. That assessment shall, inter alia, examine the progress in the availability of natural gas and biomethane, the growth of the refilling stations network in Union, the market share of natural gas vehicles in the Union, the innovation and technological developments in biomethane used as transport fuel and the real value of the minimum level of taxation.***

*Justification*

*Natural gas and biomethane can be used in existing internal combustion engines with no limitation to blending. Biomethane is one of the main pillars to reach the mandatory 2020*

target of 10% biofuels in transport. Its development is linked to that of Natural Gas Vehicles and hence a favourable tax treatment allowing the development of methane refuelling infrastructure. Methane, the available alternative to oil derived fuels, has very low NMHC, PM and NOx emissions, improving urban air quality, and also significantly reduces noise and CO<sub>2</sub>.

## Amendment 35

### Proposal for a directive – amending act

#### Article 1 – point 4 – point b

Directive 2003/96/EC

Article 4 – paragraph 4 – subparagraph 1

#### *Text proposed by the Commission*

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.*

#### *Amendment*

4. The minimum levels of general energy consumption taxation laid down in this Directive shall be *reviewed* every three years in order to *ensure that they retain their intended effects, in accordance with Article 29. If deemed necessary, the Commission shall make proposals for those minimum levels to be changed.*

## Amendment 36

### Proposal for a directive – amending act

#### Article 1 – point 4 – point b

Directive 2003/96/EC

Article 4 – paragraph 4 – subparagraph 2

#### *Text proposed by the Commission*

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.*

#### *Amendment*

The minimum levels *of CO<sub>2</sub>-related taxation laid down in this Directive shall, every three years from 1 July 2016, be aligned with the average market price of emission allowances in the EU Emission Trading Scheme over the 18 months preceding that alignment, calculated on the basis of a formula to be specified by the Commission in a delegated act adopted in accordance with Article 27.*

## Amendment 37

### Proposal for a directive – amending act

#### Article 1 – point 5 – point b

Directive 2003/96/EC

Article 5 – indent 3

#### *Text proposed by the Commission*

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

#### *Amendment*

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

#### *Justification*

*Differentiated rates of taxation may also be applied by Member States for the uses of fire trucks and police vehicles.*

## Amendment 38

### Proposal for a directive – amending act

#### Article 1 – point 6

Directive 2003/96/EC

Article 7

#### *Text proposed by the Commission*

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.

#### *Amendment*

***1.*** 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.

***2.*** *Until 1 January 2025, Member States may differentiate between commercial and non-commercial use of gas oil used as propellant, provided that the Union minimum levels are observed.*

***3.*** *‘Commercial gas oil used as propellant’ means gas oil used as propellant for the following purposes:*

***(a)*** *the carriage of goods for hire or*

*reward, or own account, by motor vehicles or articulated vehicle combinations intended exclusively for the carriage of goods by road and with a maximum permissible gross laden weight of not less than 7,5 tonnes;*

*(b) the carriage of passengers, whether by regular or occasional service, by a motor vehicle of category M2 or category M3, as defined in Council Directive 70/156/EEC of 6 February 1970 on the approximation of the laws of the Member States relating to the type-approval of motor vehicles and their trailers.*

## **Amendment 39**

**Proposal for a directive – amending act**  
**Article 1 – point 11 – point a – point i**  
Directive 2003/96/EC  
Article 14 – paragraph 1 – introductory part

### *Text proposed by the Commission*

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:

## **Amendment 40**

**Proposal for a directive – amending act**  
**Article 1 – point 11 – point a – point ii a (new)**  
Directive 2003/96/EC  
Article 14 – paragraph 1 – points b and c

### *Amendment*

**1.** 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 *energy poverty*, evasion, avoidance or abuse:

*Text proposed by the Commission*

*Amendment*

***(iia) points (b) and (c) are deleted.***

*Justification*

*This amendment deletes the obligation for Member States to exempt from taxation fuel used for the purpose of air and maritime navigation. This has a huge potential for reducing greenhouse gas emissions. A study prepared for the Commission found that 'harmonising fuel duties and VAT across the modes (at the level of those currently paid by private road transport) delivered GHG savings of over 10% compared to business as usual'. (Towards the decarbonisation of EU's transport sector by 2050, p. xi)*

#### **Amendment 41**

**Proposal for a directive – amending act**

**Article 1 – point 11 – point a – point iii**

Directive 2003/96/EC

Article 14 – paragraph 1 – point e

*Text proposed by the Commission*

*Amendment*

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

(e) until **31 December 2025**, electricity directly provided to vessels berthed in **sea and inland** ports.

#### **Amendment 42**

**Proposal for a directive – amending act**

**Article 1 – point 12**

Directive 2003/96/EC

Article 14a – paragraph 1

*Text proposed by the Commission*

*Amendment*

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.

1. Until **31 December 2025**, 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.

#### **Amendment 43**

**Proposal for a directive – amending act**  
**Article 1 – point 13 – point a – point -i (new)**  
Directive 2003/96/EC  
Article 15 – paragraph 1 – point b a (new)

*Text proposed by the Commission*

*Amendment*

***(-i) the following point is inserted:***

***'(ba) until 1 January 2023, electricity utilised to charge electric and hybrid vehicles used for road transport;'***

*Justification*

*Electrification is an important element in the process of making the transport sector sustainable. As the total emission impact of these vehicles is closely related to the cleanliness of the input electricity, they are not necessarily very environmentally-friendly in all Member States in the short run. In the long term, however, these very efficient technologies open up for the creation of truly sustainable transport systems.*

#### **Amendment 44**

**Proposal for a directive – amending act**  
**Article 1 – point 13 – point a – point i**  
Directive 2003/96/EC  
Article 15 – paragraph 1 – point h

*Text proposed by the Commission*

*Amendment*

(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;

(h) ***until 1 January 2025***, 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;

#### **Amendment 45**

**Proposal for a directive – amending act**  
**Article 1 – point 13 – point a – point i**

Directive 2003/96/EC  
Article 15 – paragraph 1 – point i

*Text proposed by the Commission*

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

*Amendment*

(i) *until* 1 January 2023, natural gas, **biogas**, and LPG used as propellants **and LPG used as fuel**. **From 1 January 2023 until 1 January 2030, Member States may apply a reduction of up to 50 % of the minimum levels of taxation for those fuels.**

## **Amendment 46**

### **Proposal for a directive – amending act**

#### **Article 1 – point 13 – point b**

Directive 2003/96/EC

Article 15 – paragraph 3

*Text proposed by the Commission*

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.

*Amendment*

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. **Member States and beneficiaries shall develop targeted strategies** 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.

#### *Justification*

*It is important that the energy efficiency efforts demanded in return for more favourable tax treatment be coordinated by the Member States in the form of targeted strategies and in cooperation with the sector, and that sufficient time be allowed to enable a degree of flexibility and facilitate sufficient investment to produce the genuine energy savings that could not be generated without public-sector support and through annual investment.*

## **Amendment 47**



**Proposal for a directive – amending act**  
**Article 1 – point 13 – point b (new)**  
Directive 2203/96/EC  
Article 15 – paragraph 3 a (new)

*Text proposed by the Commission*

*Amendment*

**3a. Member States shall provide comprehensive guidance to beneficiaries, including to small and medium-sized farms, concerning the application of energy efficiency requirements associated with reduced tax rates.**

#### **Amendment 48**

**Proposal for a directive – amending act**  
**Article 1 – point 13a\* – point a – point i a (new)**  
Directive 2003/96/EC  
Article 16 – paragraph 1 – subparagraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

**(ia) the following subparagraph is inserted after the first subparagraph:**

**"As soon as sustainability criteria are established for biomass products other than biofuels and bioliquids in Directive 2009/28/EC, an exemption or a reduced can be applied to those products only if they comply with those sustainability criteria."**

*\*NB: wrongly numbered '(1)' in the Commission proposal.*

#### **Amendment 49**

**Proposal for a directive – amending act**  
**Article 1 – point 14**  
Directive 2003/96/EC  
Article 17 – paragraph 1 – point a – paragraph 1

*Text proposed by the Commission*

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.

*Amendment*

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 **5,0 %** 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.

*Justification*

*A 3% threshold is too low and would embrace too many businesses. The ensuing bureaucracy would be disproportionate.*

**Amendment 50**

**Proposal for a directive – amending act**

**Article 1 – point 21**

Directive 2003/96/EC

Article 29

*Text proposed by the Commission*

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.

*Amendment*

Every **three** years and for the first time by the end of 2015, the Commission shall submit to **the European Parliament and 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:

- (i) the minimum levels of general energy consumption taxation in order to ensure that they preserve their intended effects,***
- (ii) the CO<sub>2</sub> price developments in the EU Emission Trading Scheme,***
- (iii) the impact of innovation and technological developments, in particular as regards energy efficiency,***
- (iv) the use of electricity in transport,***
- (v) the justification for the exemptions and reductions, including for fuel used for the purpose of air and maritime navigation, laid down in this Directive,***
- (vi) the impact of this Directive on the setting of industrial policy priorities in the Union car industry, inter alia in relation to clean, energy-efficient conventional internal combustion engines and the Union's CO<sub>2</sub> reduction targets in the car sector,***
- (vii) developments in the use of biogas, natural gas and LPG in road transport, and***
- (viii) whether harmful or potentially harmful emissions other than of CO<sub>2</sub> should also be taken into account.***

***The report shall also include an overview of existing taxation provisions contained in bilateral air service agreements. 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 TFEU.***

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.

In any event, 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. ***In this regard, national implementing conditions shall be closely scrutinised in order to ascertain that they are clear, unambiguous and transparent for all consumers.***

### *Justification*

*CO<sub>2</sub>-based taxation would have far-reaching environmental and taxation policy repercussions within the Union. The reporting obligation should therefore include Parliament. In order that policy guidance can be given, the reporting period needs to be shortened.*

## EXPLANATORY STATEMENT

### Content of the proposal

The existing directive on energy taxation, adopted in 2003, was concerned primarily with preventing distortions of competition in the energy sector within the internal market. It establishes common rules on the products subject to taxation, when taxation is to be applied and the permitted exemptions. Minimum rates – essentially based on the quantity of energy consumed – are laid down for fuels and electricity. Beyond these minima, the Member States are free to set their national rates of taxation as they see fit.

The proposal for a revised directive changes the structure of energy taxation in order to support the aim of a low-carbon, energy-efficient economy and to avoid problems in the internal market. By introducing a CO<sub>2</sub>-based element into energy taxation, the proposal seeks to bring it into line with the EU's commitments on combating climate change.

Under the Commission proposal, energy taxes will be in two parts: the first specifically linked to CO<sub>2</sub> emissions and the second based on the energy content of products.

- A single minimum rate of tax for CO<sub>2</sub> emissions (EUR 20/t CO<sub>2</sub>) will be introduced for all sectors not covered by the EU Emissions Trading System (ETS). The sectors in question, notably households, the transport sector, small businesses and agriculture, will thus become subject to a carbon charge. Renewable energy sources will escape this CO<sub>2</sub>-related tax.

- The minimum rates of energy tax applicable to a given energy product will no longer be based on volume consumed, but rather on the product's energy content (EUR/GJ). In other words, each product will be taxed according to the amount of energy it provides, thus automatically rewarding energy efficiency.

The rate of tax on a given product will combine the tax linked to CO<sub>2</sub> emissions and that based on energy content. The Member States will be free to set their own rates of taxation, above the threshold levels imposed by the EU, and to work out their own taxation structure, reproducing the ratio between the minimum rates of taxation for the various energy sources (under what is termed the 'proportionality' principle or alignment clause). They could, for example, decide that only that portion of tax linked to energy content should be increased beyond the threshold level, and not the CO<sub>2</sub>-based portion – or vice-versa.

In the area of domestic heating, the flexibility that Member States currently have to exempt certain products (gas, coal, coke and electricity) will be extended to all fuels (including mineral oils) in order to ensure that energy products are treated consistently.

The agriculture sector will continue to benefit from reduced rates of taxation, but these will be made subordinate to environmental aims, so that agriculture too contributes, in terms of effort sharing, to the reduction of energy consumption. The revised directive should apply from 2013, so that its implementation parallels the third phase of the EU ETS.

## Rapporteur's position

In principle, the rapporteur recognises this proposal as an important contribution to realisation of the EU '20-20-20' strategy for reducing greenhouse gas emissions.

She would also point out that in addressing an issue as wide-ranging and crucial as energy taxation in the European Union, consideration of climate and environmental policy imperatives, however necessary, is not sufficient. Energy policy and industrial policy aims constitute equally critical challenges for the EU. It would seem, however, that those aims have been somewhat overshadowed in the process of preparing the proposal for a revised directive. It is thus of the utmost importance to strike a balance between concerns that may be divergent or even opposing, in order to set the right course at EU level.

The rapporteur also believes it would be wise to ensure a more consistent approach to all the various energy-related matters currently being addressed by EU bodies. In order to tackle properly all aspects of energy taxation, it ought to be ensured that the steps taken are fully compatible, in particular, with the Energy Efficiency Directive (currently being considered by another EP committee) and, more broadly, with the basic thrust of a European energy policy much of which has yet to be determined. There is, however, a high likelihood that this aspiration will come to nought, or that too little heed will be paid to it, and consistency in decision making will thus be at risk.

In general, the rapporteur supports the Commission's approach in terms of methodology: seeking to tax energy on a dual basis, according to both CO<sub>2</sub> emissions and energy content. This system would seem both more logical and more consistent than the previous one. The rapporteur recognises that the arguments for better use of energy sources and greater recourse to less-polluting forms of energy are sound.

Moreover, it is estimated that the introduction of a CO<sub>2</sub> tax at the rate of EUR 20/t will secure EUR 20 billion in combined tax revenue for the EU countries as of 2020.

At the same time, however, the most tangible effect of the Commission's new proposals – on the one hand for taxing the energy products used on the dual basis of CO<sub>2</sub> emissions and energy content and, on the other, that the Member States should observe the principle of 'proportionality' between the various minima set at EU level – would be the resulting substantial increase in the price of diesel in the great majority of Member States.

While accepting in principle that the minimum rate for diesel should rise, in accordance with the logical and consistent methodology that the Commission rightly proposes to introduce, the rapporteur considers it would be unwise to stick to the principle of 'proportionality' as it stands, given the significant and destabilising effects that would inevitably result.

The first point the rapporteur would make here, on a more institutional level, is that requiring the Member States strictly to observe the principle of 'proportionality' amounts to direct intervention in the determination of tax rates applicable to the various forms of energy in all 27 Member States, whereas the rule until now has been to set threshold levels. The current proposal thus constitutes *de facto* a significant intervention by the EU in national fiscal policies.

At the level of general industrial policy, a hefty increase in the price of diesel in a large number of Member States (to give just one example, the rate of increase in Germany would be EUR 0.31/lit by 2023) could not fail to create more problems than it would solve.

From a science point of view, there is no disputing that the principle of thermodynamics gives the diesel engine significant advantages over the petrol engine, particularly in terms of performance and energy efficiency. Recent experience indicates that achieving the EU target for a reduction in CO<sub>2</sub> emissions will depend in part on increased use of vehicles with diesel engines.

Given, moreover, that Europe enjoys a considerable competitive advantage over other regions of the world with regard to the technological development of diesel engines, and that such development depends on cutting-edge research, which is one of the EU's major assets by comparison with other economic powers, it does not seem sensible to inflict a destabilising blow of this magnitude on the European automotive sector at a time when it faces stiff competition from third countries as well as structural problems.

It would take more than the 10-year transition period to 2023 to cushion the impact.

The third substantive argument against the principle of 'proportionality' concerns the effect on consumer prices. The risk of inflation triggered by a big increase in the price of certain fuels cannot be discounted, particularly as the Member States are not in a position – given the deplorable state of public finances – to cut, for example, the rate of tax on petrol.

Consumers too would thus be penalised, as well as the transport sector generally, where cost prices would rise significantly.

Given that energy prices are the main source of inflation, the rapporteur considers that any measures likely to push prices up further should be shunned.

For the same reasons, the rapporteur vigorously opposes the plan for automatic alignment of the minimum rates of taxation with either the consumer price index or CO<sub>2</sub> price movements. She is, moreover, surprised in this regard that the Commission – so swift to deploy the same arguments in denouncing automatic wage indexation where it still applies – should advocate automatic indexation of energy taxes. It is important that legislators should retain control of decision making here. A system of automatic increases is inappropriate.

With regard to **the proposals on alternative fuels such as LPG (liquefied petroleum gas) and CNG (compressed natural gas), the rapporteur recognises** that in the interests of consistency the same rates of taxation, based on energy content and on CO<sub>2</sub>, ought eventually to apply to all fuels, including these. In other words, the tax system would automatically redistribute the relative advantages of various fuels in terms of CO<sub>2</sub> emissions but no other competitive advantages would be afforded. However, given that the products in question are currently taxed at a very low rate and that it will take more time – because of investment and infrastructure costs – for them to compete effectively with traditional fuels, it is proposed that the increase in minimum rates of tax should be capped at EUR 5.50/GJ from 2015 and that the planned increase to EUR 9.60/GJ should not take place before 2018. Curbing the tax increase in this way will allow alternative fuels to enjoy the comparative advantage they need in order to facilitate the development of more fuel-efficient technology.

24.11.2011

## **OPINION OF THE COMMITTEE ON BUDGETS**

for the Committee on Economic and Monetary Affairs

on the proposal for a Council directive amending Directive 2003/96/EC restructuring the Community framework for the taxation of energy products and electricity (COM(2011)0169 – C7-0105/2011 – 2011/0092(CNS))

Rapporteur: Angelika Werthmann

### **SHORT JUSTIFICATION**

Traditionally, energy taxes have been levied for several reasons, in particular to raise revenue and to influence consumer behaviour towards a more efficient use of energy and cleaner energy sources.

All EU Member States levy energy taxes, and these are harmonised to a certain extent at EU level. One of the specific aims of the Energy Taxation Directive (ETD) from 2003 that is currently in force was to prevent distortions of competition in the energy sector within the internal market.

Since the adoption of the ETD, the underlying policy framework has changed radically (European Council of March 2008; UN Climate Change Conference, November / December 2010 in Cancun). In the areas of energy and climate change, concrete and ambitious policy objectives have been defined for the period until 2020.

The Commission's draft proposal seeks to reconcile the four different areas of climate change, energy efficiency, the internal market and promoting growth and employment.

The Commission suggests splitting future energy taxation into two components: one based on CO<sub>2</sub> content and one based on energy content.

In the context of the current discussions on a possible future system of new own resources for the EU<sup>1</sup>, the Commission proposal gains in importance from a budgetary perspective, in that a possible CO<sub>2</sub> tax could be used in part for these future own resources. In addition to this link

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<sup>1</sup> COM(2011)500; 'Europe for Growth' reform paper by Alain Lamassoure, Jutta Haug, Guy Verhofstadt.



to the EU budget, the rapporteur also considers it important to take account of the social impact of the Commission proposal.

## AMENDMENTS

The Committee on Budgets calls on the Committee on Economic and Monetary Affairs, as the committee responsible, to incorporate the following amendments in its report:

### Amendment 1

#### Proposal for a directive Recital 3 a (new)

*Text proposed by the Commission*

*Amendment*

***(3a) CO<sub>2</sub>-related taxation could also be regarded as a possible element of a future system of own resources for the European Union budget with the aim of reducing Member States' contributions and contributing towards the fight against climate change.***

*Justification*

*It was already one of the original aims of the Treaties establishing the European Communities for the Union to be financed entirely from own resources. Using part of the CO<sub>2</sub>-related taxation, along with another possible component, would be in line with this legal basis.*

### Amendment 2

#### Proposal for a directive Recital 17

*Text proposed by the Commission*

*Amendment*

(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

(17) Exemption or reductions to the benefit of ***low income*** 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

order to ensure that their impact on the internal market remains limited, such exemptions and reductions should be applied only to non-business activities.

heating fuel, electricity **and motor fuel**. 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.

#### *Justification*

*In terms of disposable income, the proposed future taxation of energy sources will impose a disproportionately high burden on low income households in comparison to medium and high income households. It seems appropriate, in view of professional and private mobility needs, to extend the possibility of tax exemptions to fuels.*

### **Amendment 3**

#### **Proposal for a directive Recital 28**

##### *Text proposed by the Commission*

(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.

##### *Amendment*

(28) Every **three** years and for the first time by the end of 2015, the Commission should report to **the European Parliament and 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. **The Commission should also monitor the market to ensure transparency of the energy market and that consumers are not adversely affected by market abuses.**

#### *Justification*

*CO2-related taxation would have far-reaching environmental and taxation policy repercussions within the Union, so the reporting obligation should include Parliament. In order that policy guidance can be given, the reporting period needs to be shortened.*

#### **Amendment 4**

##### **Proposal for a directive**

##### **Article 1 - point 13 - point a - point i**

Directive 2003/96/EC

Article 15 – paragraph 1 – point h

##### *Text proposed by the Commission*

(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;

##### *Amendment*

(h) energy products used as heating fuel, electricity ***and motor fuel, in particular*** if used by ***low income*** 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;

##### *Justification*

*In terms of disposable income, the proposed future taxation of energy sources will impose a disproportionately high burden on low income households in comparison to medium and high income households. It seems appropriate, in view of professional and private mobility needs, to extend the possibility of tax exemptions to fuels.*

#### **Amendment 5**

##### **Proposal for a directive**

##### **Article 1 – point 14**

Directive 2003/96/EC

Article 17 – paragraph 1 – point a – paragraph 1

*Text proposed by the Commission*

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.

*Amendment*

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 **5,0 %** 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.

*Justification*

*A 3% threshold is too low and would embrace too many businesses. The ensuing bureaucracy would be disproportionate.*

**Amendment 6**

**Proposal for a directive**

**Article 1 – point 21**

Directive 2003/96/EC

Article 29 – paragraph 1

*Text proposed by the Commission*

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.

*Amendment*

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

*Justification*

*CO2-related taxation would have far-reaching environmental and taxation policy repercussions within the Union, so the reporting obligation should include Parliament. In order that policy guidance can be given, the reporting period needs to be shortened.*

## PROCEDURE

<b>Title</b>	Amending Council Directive 2003/96/EC restructuring the Community framework for the taxation of energy products and electricity
<b>References</b>	COM(2011)0169 – C7-0105/2011 – 2011/0092(CNS)
<b>Committee responsible</b> Date announced in plenary	ECON 10.5.2011
<b>Committee(s) asked for opinion(s)</b> Date announced in plenary	BUDG 10.5.2011
<b>Rapporteur(s)</b> Date appointed	Angelika Werthmann 5.5.2011
<b>Date adopted</b>	22.11.2011
<b>Result of final vote</b>	+: 35 –: 0 0: 0
<b>Members present for the final vote</b>	Alexander Alvaro, Lajos Bokros, Andrea Cozzolino, Jean-Luc Dehaene, James Elles, Göran Färm, José Manuel Fernandes, Eider Gardiazábal Rubial, Ivars Godmanis, Estelle Grelier, Carl Haglund, Monika Hohlmeier, Sidonia Elżbieta Jędrzejewska, Anne E. Jensen, Sergej Kozlík, Jan Kozłowski, Giovanni La Via, Vladimír Maňka, Barbara Matera, Nadezhda Neynsky, Dominique Riquet, László Surján, Helga Trüpel, Derek Vaughan, Angelika Werthmann
<b>Substitute(s) present for the final vote</b>	Antonello Antinoro, Maria Da Graça Carvalho, Frédéric Daerden, Derk Jan Eppink, Paul Rübig, Peter Šťastný, Georgios Stavrakakis
<b>Substitute(s) under Rule 187(2) present for the final vote</b>	Arnaud Danjean, Matthias Groote, Bernadette Vergnaud

1.2.2012

## **OPINION OF THE COMMITTEE ON THE ENVIRONMENT, PUBLIC HEALTH AND FOOD SAFETY**

for the Committee on Economic and Monetary Affairs

on the proposal for a Council Directive amending Directive 2003/96/EC restructuring the Community framework for the taxation of energy products and electricity (COM(2011)0169 – C7-0105/2011 – 2011/0092(CNS))

Rapporteur: Kathleen Van Brempt

### **SHORT JUSTIFICATION**

The Commission's proposal aims at the revision of the current Energy Tax Directive: by splitting the minimum rate of taxation of energy products in two parts, namely a CO<sub>2</sub>-related taxation and a taxation based on the energy content, it will serve the goals of climate change policy better and the internal market for energy products will become more clear and fair.

The proposal is an important step in the right direction; mainly the shift of the basis for taxation from volume and weight to CO<sub>2</sub> content and energy content is a fundamental, needed and well founded change. Nevertheless, there are some reasons to assume that some goals will not be achieved completely and opportunities will be missed to maximise the contribution to the fight against climate change, the improvement of environmental quality in the EU and a fast transformation towards a low carbon economy.

The rapporteur of the opinion therefore suggests to amend the proposal of the Commission, based on the following principals:

- different means of private transport should be treated equally to maximise the internalisation of costs and create a level playing field, hence the exclusion of air and maritime transport should be deleted,
- for the same reasons, exemptions for agriculture, forestry should be phased out,
- if energy taxation would not even surpass inflation and is not linked to CO<sub>2</sub> prizes on the ETS market, it would loose its steering function,

- exempting households takes away incentives for energy efficiency in houses but on the other hand, including households without social correction mechanisms, leads to energy poverty, especially for the most vulnerable groups,
- biomass is not by definition CO<sub>2</sub> neutral.

As a conclusion, the rapporteur would like to give support to the Commission's proposal, as it is a very important step in right direction. Nevertheless it can deliver even better results, by accepting some adjustments and deleting some exclusions and exemptions.

## AMENDMENTS

The Committee on the Environment, Public Health and Food Safety calls on the Committee on Economic and Monetary Affairs, as the committee responsible, to incorporate the following amendments in its report:

Amendment 1

### **Proposal for a directive Recital 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***(1a) Genuine consistency should be ensured within the Union in relation to the taxation of the various energy sources, and a framework for the taxation of renewable energies should be introduced.***

**Amendment 2**

### **Proposal for a directive Recital 2**

*Text proposed by the Commission*

*Amendment*

(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

(2) It is necessary to ensure that the internal market ***functions in an optimum manner*** 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.

December 2008.

### **Amendment 3**

#### **Proposal for a directive**

##### **Recital 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***(2a) Account should be taken of the practical consequences of a new tax deal, particularly at a time when Europe is in the throes of a financial and economic crisis, the effects and implications of which need to be gauged. In this connection, the data collected during the impact study should be brought up to date.***

### **Amendment 4**

#### **Proposal for a directive**

##### **Recital 3**

*Text proposed by the Commission*

*Amendment*

### **Amendment 5**

#### **Proposal for a directive**

##### **Recital 5**

*Text proposed by the Commission*

*Amendment*

(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

(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.

that are biomass or made from biomass, *provided that they meet 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*<sup>1</sup>.

<sup>1</sup> OJ L 140, 5.6.2009, p. 16.

## Amendment 6

### Proposal for a directive Recital 8

#### *Text proposed by the Commission*

(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.

#### *Amendment*

(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 *which take due account of Member States' specificities* should be foreseen.

## Amendment 7

### Proposal for a directive Recital 9

#### *Text proposed by the Commission*

(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

#### *Amendment*

(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*.

Decision recognises that efforts to reduce their greenhouse gas emissions should be fairly distributed between the Member States, transitional periods should be fixed.

## Amendment 8

### Proposal for a directive Recital 13

#### *Text proposed by the Commission*

(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.

#### *Amendment*

(13) 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 ***should be retained.*** 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.

#### *Justification*

*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 should be retained, as no alternative fuel is yet available for use in commercial transport.*

## Amendment 9

### Proposal for a directive Recital 15

#### *Text proposed by the Commission*

(15) Article 5 of Directive 2003/96/EC permits the application of differentiated rates of taxation in certain cases. However,

#### *Amendment*

(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.

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 *oil-derived* 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.

#### *Justification*

*Natural gas/biomethane is the alternative to oil derived fuels and has uniquely low emissions of toxic or carcinogenic substances, almost zero particulate emissions, no emissions of reactive hydrocarbons, reduced NOx emissions, as well as reduced noise, which makes it an ideal motor fuel in urban surroundings. The Expert Group of Future Transport Fuels report from 25th January 2011 states that methane should be promoted as one of the main alternative fuels in urban transport.*

### **Amendment 10**

#### **Proposal for a directive**

#### **Recital 17**

##### *Text proposed by the Commission*

(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.

##### *Amendment*

(17) ***Care should be taken to ensure that households, which have been hard-hit by the economic and financial crisis, with some being pushed into social insecurity and energy poverty by the extreme economic conditions, are not further penalised by an increase in the tax burden.*** 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.

## Amendment 11

### Proposal for a directive Recital 18

#### *Text proposed by the Commission*

(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.

#### *Amendment*

(18) In the case of liquefied petroleum gas (LPG) used as **motor fuel**, advantages in the form of lower minimum levels of general energy consumption taxation or the possibility to exempt **this** energy **product** 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. ***In the case of natural gas and biomethane used as motor fuels, advantages in the form of lower minimum levels of general energy consumption taxation or the possibility to exempt those energy products from taxation should only be removed after an assessment, to be carried out by the Commission by 2023, on the implementation of the provisions of this Directive relating to the level of taxation applicable to natural gas in road transport. That assessment should, inter alia, examine the progress in the availability of natural gas and biomethane, the growth of the refilling stations network in Europe, the market share of natural gas vehicles in the Union, innovation and technological developments in biomethane used as transport fuel and the real value of the minimum level of taxation.***

#### *Justification*

*Biomethane is one of the main pillars to reach the 2020 targets of 10% biofuels. The development of biomethane is linked to that of Natural Gas Vehicles and hence a favourable tax treatment allowing the development of methane refuelling infrastructure. Methane, the*

*available alternative to oil derived fuels, has very low NMHC, PM and NOx improving urban air quality and also reduces noise and CO<sub>2</sub>. A “review clause” is the right legislative tool to assess the need to maintain a favourable tax treatment for alternative fuels, also in the view of the development of gaseous fuels from renewable sources.*

## **Amendment 12**

### **Proposal for a directive Recital 18 a (new)**

*Text proposed by the Commission*

*Amendment*

***(18a) To achieve the transport emission reduction target of 60 % by 2050, as indicated in the Commission White Paper of 28 March 2011 entitled "Roadmap to a Single European Transport Area – Towards a competitive and resource efficient transport system", by halving the use of ‘conventionally-fuelled’ cars in urban transport by 2030, the market development of hydrogen and electricity, indicated as the main options to substitute oil as a transport fuel by the Future Transport Fuels Report of the Expert Group on Alternative Fuels headed by the Commission's Directorate-General for Mobility and Transport and presented by the Commission on 25 January 2011, should be further stimulated. As Union legislation, such as the new TEN T Guidelines, increasingly includes support for the integration of low-carbon transport fuel technologies, more insight in the impact of current and future Union Energy and Environment legislation is needed on the uptake of the use of alternative fuels such as hydrogen and electricity in Europe's energy and transport system.***

***The Commission's proposal, which was to have been submitted by December 31, 2011, for a methodology for calculating the contribution of hydrogen originating from renewable sources in the total fuel mix, as referred to in Article 3(4) of Directive 2009/28/EC should be***

*accompanied by an impact assessment of the proposed changes to Directive 2003/96/EC to stimulate the use of renewable hydrogen as a clean and energy-efficient transport fuel.*

## Amendment 13

### Proposal for a directive Recital 20

*Text proposed by the Commission*

(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.*

*Amendment*

(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. As regards CO<sub>2</sub> related taxation the treatment of the sectors concerned should *take account of the size and output of holdings. In the farming sector, such taxation should also be based on carbon capture capacity, such as that afforded by permanent grasslands.*

## Amendment 14

### Proposal for a directive Recital 21

*Text proposed by the Commission*

(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

*Amendment*

(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 *the* lower energy content per quantitative unit

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.

**of liquid biofuels**, 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 **the** 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. ***In the case of biomethane, the energy content per quantitative unit is the same as for natural gas. Given the fact that biomethane injected into the natural gas grid helps to increase the share of renewable sources, biomethane should be exempted from taxation with respect to the CO<sub>2</sub> and energy content, provided it is produced in accordance with the sustainability criteria laid down in Article 17 of Directive 2009/28/EC.***

#### *Justification*

*Biomethane is one of the main pillars to reach the mandatory 2020 target of 10% biofuels in transport. There is no limitation to the blending of natural gas and biomethane thanks to the same molecular composition. They are the only available lower emissions alternative to oil derived fuels. Therefore biomethane needs to be tax exempted with respect to the CO<sub>2</sub> and the energy related tax burden. The percentage of biomethane injected into the natural gas grid would be deducted of the total tax related to natural gas.*

#### **Amendment 15**

##### **Proposal for a directive Recital 28**

###### *Text proposed by the Commission*

(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

###### *Amendment*

(28) Every **three** years and for the first time by the end of 2015, the Commission should report to the Council on the



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.

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.

## **Amendment 16**

### **Proposal for a directive**

#### **Article 1 – point 2 – point a a (new)**

Directive 2003/96/EC

Article 2 – paragraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

***(aa) The following paragraph is added:***

***"1a. Before 31 December 2012 the Commission shall present a proposal to include a minimum tax rate for nuclear fuel rods used for the production of electricity in this Directive and to add nuclear fuel rods to the energy products set out in paragraph 1 of this Article."***

*Justification*

*This revision of the Energy Tax Directive does not address the issue of nuclear fuels. Yet the externalities associated with the use of nuclear power, the potential risk in the event of a nuclear accident, and the requirement for a level playing field between different energy sources, all justify the inclusion of a minimum tax rate on nuclear fuel rods in the Directive. This minimum tax rate should correspond with the financial advantage enjoyed by nuclear power as a result of increased electricity prices resulting from the EU Emission Trading Scheme.*

## **Amendment 17**

## **Proposal for a directive**

### **Article 1 – point 3**

Directive 2003/96/EC

Article 3 – point b – second indent

*Text proposed by the Commission*

*Amendment*

– dual use of energy products

– **energy-intensive industry and** dual use of energy products

*Justification*

*It is desirable to specify in the Directive that it is not to apply to energy-intensive industry, thus ensuring that the Directive treats all energy-intensive sectors of industry equally.*

## **Amendment 18**

### **Proposal for a directive**

#### **Article 1 – point 4 – point b**

Directive 2003/96/EC

Article 4 – paragraph 3 – subparagraph 1

*Text proposed by the Commission*

*Amendment*

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.

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. ***The derogations provided for in Article 7 shall apply to commercial transport.***

*Justification*

*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 should be retained, as no alternative fuel is yet available for use in commercial transport.*

## **Amendment 19**

**Proposal for a directive**  
**Article 1 – point 4 – point b**  
Directive 2003/96/EC  
Article 4 – paragraph 3 – subparagraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

***In the case of natural gas and biomethane used as motor fuels, higher minimum levels of general energy consumption taxation shall apply only after an assessment, to be carried out by the Commission by 2023, on the implementation of the provisions of this Directive relating to the level of taxation applicable to natural gas in road transport. That assessment shall, inter alia, examine the progress in the availability of natural gas and biomethane, the growth of the refilling stations network in Europe, the market share of natural gas vehicles in the Union, the innovation and technological developments in biomethane used as transport fuel and the real value of the minimum level of taxation.***

*Justification*

*Natural gas and biomethane can be used in existing internal combustion engines with no limitation to blending. Biomethane is one of the main pillars to reach the mandatory 2020 target of 10% biofuels in transport. Its development is linked to that of Natural Gas Vehicles and hence a favourable tax treatment allowing the development of methane refuelling infrastructure. Methane, the available alternative to oil derived fuels, has very low NMHC, PM and NOx emissions, improving urban air quality, and also significantly reduces noise and CO<sub>2</sub>.*

## **Amendment 20**

**Proposal for a directive**  
**Article 1 – point 5 – point b**  
Directive 2003/96/EC  
Article 5 – third indent

*Text proposed by the Commission*

*Amendment*

– for the following uses: local public

– for the following uses: local public

passenger transport (excluding taxis), waste collection, armed forces and public administrations, disabled people, ambulances;

passenger transport (excluding taxis **running on oil-derived motor fuels**), waste collection, armed forces and public administrations, disabled people, ambulances;

### *Justification*

*Natural gas/biomethane is the alternative to oil derived fuels and has uniquely low emissions of toxic or carcinogenic substances, almost zero particulate emissions, no emissions of reactive hydrocarbons, reduced NOx emissions, as well as reduced noise, which makes it an ideal motor fuel in urban surroundings. The Expert Group of Future Transport Fuels report from 25th January 2011 states that methane should be promoted as one of the main alternative fuels in urban transport.*

## **Amendment 21**

### **Proposal for a directive**

#### **Article 1 – point 6**

Directive 2003/96/EC

Article 7

#### *Text proposed by the Commission*

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.

#### *Amendment*

**1.** 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.

***2. Member States may differentiate between commercial and non-commercial gas oil.***

***'Commercial gas oil used as propellant' shall mean gas oil used as propellant for the following purposes:***

***(a) to transport goods either for hire or reward, or on own account, by means of a motor vehicle or articulated vehicle combination intended exclusively for the carriage of goods by road,***

***(b) to carry passengers, whether by regular or occasional service, by means of a motor vehicle.***

***3. Member States shall lay down the option for commercial transporters to***

***apply a different tax account system.***

*Justification*

*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 should be retained, as no alternative fuel is yet available for use in commercial transport.*

**Amendment 22**

**Proposal for a directive**

**Article 1 – point 11 – point a – point iii**

Directive 2003/96/EC

Article 14 – paragraph 1 – point e

*Text proposed by the Commission*

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

*Amendment*

(e) electricity directly provided to vessels berthed in ports.

*Justification*

*Investments in ports and ships to make it possible for vessels to plug in to electricity from the quay are substantial, so there should not be an end date to the exemption if we want to see more of these kinds of initiatives arise in our European ports the next coming years. Investments would be hindered if there is a threat that from 2021 on this electricity could be taxed.*

**Amendment 23**

**Proposal for a directive**

**Article 1 – point 13 – point a – point i**

Directive 2003/96/EC

Article 15 – paragraph 1 – point h

*Text proposed by the Commission*

(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***

*Amendment*

(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;

*place, taxation shall apply in proportion to each type of use. If a use is insignificant, it may be treated as nil;*

#### **Amendment 24**

##### **Proposal for a directive**

**Article 1 – point 13 – point a – point i**

Directive 2003/96/EC

Article 15 – paragraph 1 – point i

*Text proposed by the Commission*

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

*Amendment*

(i) until 1 January 2023 natural gas, *biomethane* and LPG used as *motor fuels*, *without prejudice to Article 29, subparagraph 3a*;

#### **Amendment 25**

##### **Proposal for a directive**

**Article 1 – point 13 – point a – point i a (new)**

Directive 2003/96/EC

Article 15 – paragraph 1 – point m (new)

*Text proposed by the Commission*

*Amendment*

*(ia) the following point is added:*  
*"(m) LPG used as heating fuel, including by way of derogation from Article 4(3) of this Directive;"*

#### *Justification*

*Member States must have the option of applying derogations from the minimum levels of excise laid down and from the principle of fiscal neutrality referred to in paragraph 4(3). The derogations are justified by the environmental role of LPG (in terms of reducing CO<sub>2</sub> in comparison with other traditional fuels) and by its social role, as it makes it possible to supply energy for primary use by citizens (heating, cooking and water heating) in marginal areas (areas which are sparsely populated, rural or mountainous and islands).*

#### **Amendment 26**

##### **Proposal for a directive**

**Article 1 – point 13 – point b**

*Text proposed by the Commission*

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.***

*Amendment*

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.

**Amendment 27**

**Proposal for a directive**

**Article 1 – point 13 a\* – point a – point i a (new)**

Directive 2003/96/EC

Article 16 – paragraph 1– subparagraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

***(ia) The following subparagraph is added:***

***"In the case of biomethane, the energy content per quantitative unit is the same as for natural gas. Given the fact that biomethane injected into the natural gas grid helps to increase the share of renewable sources, biomethane shall be exempted from taxation with respect to the CO<sub>2</sub> and energy content, provided it is produced in accordance with the sustainability criteria laid down in Article 17 of Directive 2009/28/EC."***

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*\*Following Article 1, point 13, the Commission proposal incorrectly contains a number "(1)" instead of point 14.*

*Justification*

*Biomethane is one of the main pillars to reach the mandatory 2020 target of 10% biofuels in transport. There is no limitation to the blending of natural gas and biomethane thanks to the*

*same molecular composition. They are the only available lower emissions alternative to oil derived fuels. Therefore biomethane needs to be tax exempted with respect to the CO<sub>2</sub> and the energy related tax burden. The percentage of biomethane injected into the natural gas grid would be deducted of the total tax related to natural gas.*

## **Amendment 28**

### **Proposal for a directive**

#### **Article 1 – point 21**

Directive 2003/96/EC

Article 29 – subparagraph 1

#### *Text proposed by the Commission*

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.

#### *Amendment*

Every **three** 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.

#### *Justification*

*To be able to quickly incorporate new evolutions and technological developments and to be able to follow up evolutions on the carbon market, the taxation levels should be checked for possible modifications every three years.*

## **Amendment 29**

### **Proposal for a directive**

#### **Article 1 – point 21**

Directive 2003/96/EC

Article 29 – subparagraph 3 a (new)

#### *Text proposed by the Commission*

#### *Amendment*

***By 2023 the Commission shall submit to the Council an assessment on the implementation of the provisions of this Directive relating to the level of taxation applicable to natural gas in road transport and a proposal for its amendment. That assessment shall, inter alia, examine the progress in the availability of natural gas and biomethane, the growth of the refilling stations network in Europe, the***



***market share of natural gas vehicles in the Union, the innovation and technological developments in biomethane used as transport fuel and the real value of the minimum level of taxation.***

*Justification*

*A “review clause“ is the right legislative tool to assess in the medium term the need to maintain a favourable tax treatment for alternative fuels, also in the view of the development of gaseous fuels from renewable sources. Biomethane is one of the main pillars to reach the 2020 target of 10% biofuels in transport. Since the development of Biomethane is linked to that of Natural Gas Vehicles, a favourable tax treatment in the medium term is needed. Natural gas/biomethane engines have very low pollutants emissions while also significantly reducing noise and CO<sub>2</sub> emissions vs. diesel and petrol engines.*

## PROCEDURE

<b>Title</b>	Amending Council Directive 2003/96/EC restructuring the Community framework for the taxation of energy products and electricity
<b>References</b>	COM(2011)0169 – C7-0105/2011 – 2011/0092(CNS)
<b>Committee responsible</b> Date announced in plenary	ECON 10.5.2011
<b>Committee(s) asked for opinion(s)</b> Date announced in plenary	ENVI 10.5.2011
<b>Discussed in committee</b>	26.10.2011
<b>Date adopted</b>	31.1.2012
<b>Result of final vote</b>	+: 28 –: 16 0: 19
<b>Members present for the final vote</b>	János Áder, Elena Oana Antonescu, Kriton Arsenis, Sophie Auconie, Pilar Ayuso, Paolo Bartolozzi, Martin Callanan, Nessa Childers, Chris Davies, Esther de Lange, Anne Delvaux, Bas Eickhout, Edite Estrela, Jill Evans, Karl-Heinz Florenz, Elisabetta Gardini, Gerben-Jan Gerbrandy, Matthias Groote, Françoise Grossetête, Satu Hassi, Jolanta Emilia Hibner, Dan Jørgensen, Karin Kadenbach, Christa Kläß, Holger Kraemer, Jo Leinen, Peter Liese, Zofija Mazej Kukovič, Linda McAvan, Radvilė Morkūnaitė-Mikulėnienė, Gilles Pargneaux, Antonyia Parvanova, Sirpa Pietikäinen, Mario Pirillo, Pavel Poc, Anna Rosbach, Oreste Rossi, Dagmar Roth-Behrendt, Daciana Octavia Sârbu, Carl Schlyter, Richard Seeber, Theodoros Skylakakis, Bogusław Sonik, Anja Weisgerber, Åsa Westlund, Glenis Willmott, Sabine Wils
<b>Substitute(s) present for the final vote</b>	Margrete Auken, Vicky Ford, Romana Jordan Cizelj, Filip Kaczmarek, Riikka Manner, Marisa Matias, Miroslav Mikolášik, Bill Newton Dunn, James Nicholson, Bart Staes, Eleni Theoharous, Vladimir Urutchev, Kathleen Van Brempt, Andrea Zanon
<b>Substitute(s) under Rule 187(2) present for the final vote</b>	Julie Girling, Emma McClarkin

7.2.2012

## **OPINION OF THE COMMITTEE ON INDUSTRY, RESEARCH AND ENERGY**

for the Committee on Economic and Monetary Affairs

on the proposal for a Council Directive amending Directive 2003/96/EC restructuring the Community framework for the taxation of energy products and electricity (COM(2011)0169 – C7-0105/2011 – 2011/0092(CNS))

Rapporteur: Béla Kovács

### **SHORT JUSTIFICATION**

The general objective of the proposal for a Council Directive amending Directive 2003/96/EC restructuring the Community framework for the taxation of Energy products and electricity (ETD) is to restructure the way in which energy is taxed to support the objective of moving to low carbon and energy-efficient economy and to avoid problems for the Internal market. The aim of the proposal is to ensure consistent treatment of energy sources, provide and adapted framework for the taxation of renewable energies and provide a framework for the use of CO2 taxation.

To this end the revised ETD proposes to split the minimum rate of taxation of energy products in two parts:

1. CO<sub>2</sub>-related taxation, based on the CO<sub>2</sub> emissions of the energy product, fixed at a level of 20 euro per tonne CO<sub>2</sub>;
2. General energy consumption taxation, based on energy content measured in GJ, regardless of the energy product

#### **The position of the rapporteur:**

The ITRE Rapporteur welcomes in principle the overall objectives of the proposed revision of the ETD, in particular the aim to bring the Directive more closely into line with EU's energy and climate change objectives. However, the rapporteur is concerned on the possible effect of the proposal to Member States' discretion to select their energy mix pursuant to the provisions of the Lisbon Treaty. The proposal will have considerable consequences on the autonomy of Member States' energy tax regimes, and on businesses operating in the energy market.

Therefore the action at EU level should be justified in detail and it should be consistent with the legal base proposed.

The rapporteur underlines that the impact assessment does not contain a "detailed statement" to make it possible to appraise compliance with the principle of subsidiarity (and proportionality), as required by Article 5 of Protocol (No 2.). While the proposal does fall under shared Union and Member State competence, the rapporteur notes that the proposed revision of the ETD is not in all respects limited to what is necessary in order to achieve the objectives and in any case the decisions should be taken as closely as possible to the EU citizen. A departure from this presumption should not be taken for granted but be justified with sufficient detail and clarity so that an EU citizen can understand the qualitative and quantitative reasons leading to the conclusion that EU action is necessary.

The rapporteur is also concerned on some possible economic and socio-economic impacts of the proposed ETD revision:

The rapporteur stresses that first of all, any measures related to the revision of the present ETD should have been thoroughly analysed in terms of impact on individual Member State economies and secondly, a revised ETD should have proposed flexible and realistic solutions adapted to these individual economies. The rapporteur also reminds that realistic transition periods are required.

The rapporteur regrets that the Commission proposal have not included industrial policy sufficiently in its' proposal. The revision of the ETD provides for a common energy tax based on the energy content of fuels, which will require important changes in the level of taxation of different sources in most Member States. It is important that the impact on all industries and business sectors are assessed in order to ensure the European competitiveness. The revision of ETD revision should not lead to the market disruption following loss in employment. Furthermore coherence with other policy areas should be ensured.

Minimum rates were last set in 2003 and the rapporteur accepts there is a case for reviewing these to take account of accumulated inflation and the need to ensure they continue to provide an effective single market framework which also takes account of the environmental impact of different fuels. However, the rapporteur notes that automatic indexation of minimum rates would remove Member State control over the level of future EU minimum rates. The rapporteur fears also that the implementation of the directive as proposed by the European Commission would result in increased prices in for example for coal, natural gas, heating oil and diesel oil and will have direct negative social impact due to increased prices of heat and manufactured products to be paid by the end users. An automatic adjustment of the general energy consumption tax could expose the final customer to unreasonable and disproportionate burdens. The rapporteur reminds that the fuel prices have already risen heavily under the last years.

The rapporteur fears that the limited flexibility left to the Member States in the proposed ETD revision will result in increasing costs of energy and fuel to sectors like agriculture, horticultural or piscicultural works and forestry.

The rapporteur maintains that the Member States should be able to determine the structure of their national taxes as well the relativities between national tax rates for energy products. The

rapporteur reminds that the European air quality and CO2 legislation have required massive investments and therefore for example the differentiated taxation of diesel and petrol should continue to give a fiscal incentive to diesel for being more energy efficient and more CO2 saving technology than petrol and the diesel tax should not be higher than the tax on petrol.

## AMENDMENTS

The Committee on Industry, Research and Energy calls on the Committee on Economic and Monetary Affairs, as the committee responsible, to incorporate the following amendments in its report:

### Amendment 1

#### Proposal for a directive

##### Recital 8

*Text proposed by the Commission*

(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.**

*Amendment*

(8) In the interest of **technological** neutrality, minimum levels of taxation should apply to all energy products put to a given use. Equal **rates** of national taxation **are not necessary where energy policy is** concerned.

### Amendment 2

#### Proposal for a directive – amending act

##### Recital 12

*Text proposed by the Commission*

(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**

*Amendment*

**deleted**

*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.*

### **Amendment 3**

#### **Proposal for a directive Recital 13**

*Text proposed by the Commission*

***(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.

### **Amendment 4**

#### **Proposal for a directive Recital 14 a (new)**

*Text proposed by the Commission*

*Amendment*

(13) 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.

***(14a) Any reform of energy taxation should be such as to ensure that sectors not falling under the emission trading scheme are not disadvantaged in relation to sectors covered by that scheme.***

## Amendment 5

### Proposal for a directive Recital 18

#### *Text proposed by the Commission*

(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.

#### *Amendment*

(18) In the case of liquefied petroleum gas (LPG) used as **motor fuel**, advantages in the form of lower minimum levels of general energy consumption taxation or the possibility to exempt **such fuel** 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.

## Amendment 6

### Proposal for a directive Article 1 – point 1 Directive 2003/96/EC Article 1 – paragraph 1

#### *Text proposed by the Commission*

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

#### *Amendment*

1. Member States shall impose taxation on energy products and electricity in accordance with this Directive, **ensuring that products and services are provided at affordable prices in order to eliminate the risk of citizens being exposed to energy poverty. Impact studies shall be carried out to by the Commission this end.**

#### *Justification*

*The European Union's main objective is to ensure the well-being of its citizens.*

## Amendment 7

**Proposal for a directive**

**Article 1 – point 2 – point a – point i**

Directive 2003/96/EC

Article 2 – paragraph 1 – point h

*Text proposed by the Commission*

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

*Amendment*

(h) falling within CN codes 2909 19 10,  
3824 90 91 **and 3824 90 97;**

**Amendment 8**

**Proposal for a directive**

**Article 1 – point 2 – point a – point ii**

Directive 2003/96/EC

Article 2 – paragraph 1 – point j

*Text proposed by the Commission*

(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.

*Amendment*

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

**Amendment 9**

**Proposal for a directive**

**Article 1 – point 3**

Directive 2003/96/EC

Article 3 – paragraph 1 – point a b (new)

*Text proposed by the Commission*

*Amendment*

***(ab) electricity used to pump water for  
irrigation;***

**Amendment 10**

**Proposal for a directive**

**Article 1 – point 4 – point b – introductory part**

Directive 2003/96/EC

Article 4 – paragraph 3 – paragraph 4



*Text proposed by the Commission*

*Amendment*

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

*Justification*

*This provision breaches the subsidiarity principle, since it restricts Member States' freedom to define their fiscal policy.*

## **Amendment 11**

### **Proposal for a directive**

#### **Article 1 – point 4 – point b**

Directive 2003/96/EC

Article 4 – paragraph 3 – subparagraph 1

*Text proposed by the Commission*

*Amendment*

***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.*** ***deleted***

## **Amendment 12**

### **Proposal for a directive – amending act**

#### **Article 1 – point 4 – point b**

Directive 2003/96/EC

Article 4 – paragraph 3 – subparagraph 2

*Text proposed by the Commission*

*Amendment*

***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*** ***deleted***

*use.*

*Justification*

*See Recital 12.*

### **Amendment 13**

#### **Proposal for a directive**

#### **Article 1 – point 4 – point b**

Directive 2003/96/EC

Article 4 – paragraph 4 – subparagraph 1

*Text proposed by the Commission*

*Amendment*

***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.*** ***deleted***

*Justification*

*This provision breaches the subsidiarity principle, since it restricts Member States' freedom to define their fiscal policy.*

### **Amendment 14**

#### **Proposal for a directive – amending act**

#### **Article 1 – point 4 – point b**

Directive 2003/96/EC

Article 4 – paragraph 4 – subparagraph 2

*Text proposed by the Commission*

*Amendment*

***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*** ***deleted***

***adaptation is less than 0.5%, no adaptation shall take place.***

*Justification*

*Automatic indexation of minimum rates would remove Member State control over the level of future EU minimum rates.*

**Amendment 15**

**Proposal for a directive**  
**Article 1 – point 5 – point a**  
Directive 2003/96/EC  
Article 5 – introductory part

*Text proposed by the Commission*

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:

*Amendment*

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

**Amendment 16**

**Proposal for a directive**  
**Article 1 – point 6 – introductory part**  
Directive 2003/96/EC  
Article 7 – paragraph 1

*Text proposed by the Commission*

(6) Article 7 is replaced by the following:

*Amendment*

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

**Amendment 17**

**Proposal for a directive**  
**Article 1 – point 11 – point a – point i**  
Directive 2003/96/EC  
Article 14 – paragraph 1

*Text proposed by the Commission*

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:

**Amendment 18**

**Proposal for a directive**

**Article 1 – point 13 – point a – point -i (new)**

Directive 2003/96/EC

Article 15 – paragraph 1 – point b a (new)

*Text proposed by the Commission*

**Amendment 19**

**Proposal for a directive**

**Article 1 – point 13 – point a – point i**

Directive 2003/96/EC

Article 15 – paragraph 1 – point h

*Text proposed by the Commission*

(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

*Amendment*

**I.** 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 **energy poverty**, evasion, avoidance or abuse:

*Amendment*

**(-i) the following point is added:**

**"(ba) until 1 January 2023, electricity utilised to charge electric and hybrid vehicles used for road transport."**

*Amendment*

(h) **electricity, natural gas, coal, solid fuels and other** 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

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;

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;

## Amendment 20

### Proposal for a directive

#### Article 1 – point 13 – point a – point i

Directive 2003/96/EC

Article 15 – paragraph 1 – point i

*Text proposed by the Commission*

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

*Amendment*

(i) until 1 January 2023, natural gas, **biogas**, and LPG used as propellants **and LPG used as fuel**;

## Amendment 21

### Proposal for a directive

#### Article 1 – point 13 – point a – point i a (new)

Directive 2003/96/EC

Article 15 – paragraph 1 – point I a (new)

*Text proposed by the Commission*

*Amendment*

***(ia) the following point is added:***

***"(la) natural gas and biomethane used as transport fuel at least until such time as the proportion of renewable energy used in the transport sector has risen to 10 %. The Commission shall keep market trends under continuous review and shall submit an appropriate legislative proposal in due course."***

## Amendment 22

### Proposal for a directive

#### Article 1 – point 13 – point a – point ii

Directive 2003/96/EC  
Article 15 – paragraph 1

*Text proposed by the Commission*

*Amendment*

**(ii) the following subparagraph is added:**

**deleted**

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

### **Amendment 23**

#### **Proposal for a directive – amending act**

##### **Article 1 – point 13 – point b**

Directive 2003/96/EC  
Article 15 – paragraph 3

*Text proposed by the Commission*

*Amendment*

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.**

3. Member States may apply a level of down to zero **to** energy products and electricity used for **irrigation**, agricultural, horticultural, aquacultural works and in forestry.

#### *Justification*

*Member States should be allowed also in the future to apply to agricultural, horticultural and piscicultural works as well as to forestry a level of taxation down to zero.*

### **Amendment 24**

#### **Proposal for a directive**

##### **Article 1 – point 13 – point 1 – point a – point i**

Directive 2003/96/EC  
Article 16 – paragraph 1– introductory part

*Text proposed by the Commission*

*Amendment*

Until 1 January 2023, Member States may, without prejudice to paragraph 5 of this Article, apply an exemption or a reduced

*1.* Until 1 January 2023, Member States may, without prejudice to paragraph 5 of this Article , apply an exemption or a

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:

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 **or** 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 **or, as far as fuel is concerned, for as long as their market share remains below 5%.**

## Amendment 25

### Proposal for a directive

#### Article 1 – point 14

Directive 2003/96/EC

Article 18 – paragraph 5

#### *Text proposed by the Commission*

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.

#### *Amendment*

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 **2030** 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 **on reducing** the minimum levels of CO<sub>2</sub>-related taxation **by comparison with those** set out in Annex I.

## Amendment 26

### Proposal for a directive

#### Article 1 – point 19

Directive 2003/96/EC

Article 27 – paragraph 1

*Text proposed by the Commission*

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***.

*Amendment*

1. The power to adopt delegated acts referred to in *Article 2(5)* shall be conferred on the Commission for ***a*** period of ***five years***.

**Amendment 27**

**Proposal for a directive**

**Article 1 – point 21**

Directive 2003/96/EC

Article 29 – paragraph 1

*Text proposed by the Commission*

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***.

*Amendment*

Every five years and for the first time by the end of 2015, the Commission shall submit to the ***European Parliament and to the*** Council a report on the application of this Directive and ***the impact of its application on the Union's economy and the well-being of Union citizens. If that report concludes that amendments to this Directive are necessary, the Commission shall submit*** a proposal.

**Amendment 28**

**Proposal for a directive**

**Article 1 – point 21**

Directive 2003/96/EC

Article 29 – paragraph 2

*Text proposed by the Commission*

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,

*Amendment*

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.

laid down in this Directive. The report shall take into account the *impact on prices of goods and services and on energy poverty among the population in the Member States*, the proper functioning of the internal market, the real value of the minimum levels of taxation and the wider objectives of the Treaty *and the success of efforts to use tax revenue to increase the sectors' energy efficiency*.

## **Amendment 29**

### **Proposal for a directive**

#### **Annex**

Directive 2003/96/EC

Annex I – Table A – Column 2

#### *Text proposed by the Commission*

CO2-related taxation

1 January 2013

**20** EUR/t CO<sub>2</sub>

**20** EUR/t CO<sub>2</sub>

**20** EUR/t CO<sub>2</sub>

**20** EUR/t CO<sub>2</sub>

**20** EUR/t CO<sub>2</sub>

#### *Amendment*

CO2-related taxation

1 January 2013

**12** EUR/t CO<sub>2</sub>

**12** EUR/t CO<sub>2</sub>

**12** EUR/t CO<sub>2</sub>

**12** EUR/t CO<sub>2</sub>

**12** EUR/t CO<sub>2</sub>

## **Amendment 30**

### **Proposal for a directive**

#### **Annex**

Directive 2003/96/EC

Annex I – Table A – Column 5

#### *Text proposed by the Commission*

**General energy consumption taxation**

**1 January 2018**

**9.6 EUR/GJ**

#### *Amendment*

**deleted**

**9.6 EUR/GJ**

**9.6 EUR/GJ**

**9.6 EUR/GJ**

**9.6 EUR/GJ**

### **Amendment 31**

#### **Proposal for a directive**

##### **Annex**

Directive 2003/96/EC

Annex I – Table A – Row 7

*Text proposed by the Commission*

Natural gas CN codes 2711 11 00 and 2711 21 00	20 €/t CO <sub>2</sub>	<b>1.5 €/GJ</b>	<b>5.5 €/GJ</b>	<b>9.6 €/GJ</b>
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#### *Amendment*

Natural gas CN codes 2711 11 00 and 2711 21 00	20 €/t CO <sub>2</sub>	<b>1.0 €/GJ</b>	<b>1.0 €/GJ</b>	<b>1.0 €/GJ</b>
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### **Amendment 32**

#### **Proposal for a directive**

##### **Annex**

Directive 2003/96/EC

Annex I – Table B – Column 2

*Text proposed by the Commission*

CO<sub>2</sub>-related taxation

**20** EUR/t CO<sub>2</sub>

**20** EUR/t CO<sub>2</sub>

**20** EUR/t CO<sub>2</sub>

**20** EUR/t CO<sub>2</sub>

*Amendment*

CO<sub>2</sub>-related taxation

**12** EUR/t CO<sub>2</sub>

**12** EUR/t CO<sub>2</sub>

**12** EUR/t CO<sub>2</sub>

**12** EUR/t CO<sub>2</sub>

### **Amendment 33**

**Proposal for a directive**  
**Annex**  
Directive 2003/96/EC  
Annex I – Table C – Column 2

*Text proposed by the Commission*

*Amendment*

CO2-related taxation

**20** EUR/t CO<sub>2</sub>

**20** EUR/t CO<sub>2</sub>

**20** EUR/t CO<sub>2</sub>

**20** EUR/t CO<sub>2</sub>

**20** EUR/t CO<sub>2</sub>

**20** EUR/t CO<sub>2</sub>

CO2-related taxation

**12** EUR/t CO<sub>2</sub>

**12** EUR/t CO<sub>2</sub>

**12** EUR/t CO<sub>2</sub>

**12** EUR/t CO<sub>2</sub>

**12** EUR/t CO<sub>2</sub>

**12** EUR/t CO<sub>2</sub>

## PROCEDURE

<b>Title</b>	Amending Council Directive 2003/96/EC restructuring the Community framework for the taxation of energy products and electricity
<b>References</b>	COM(2011)0169 – C7-0105/2011 – 2011/0092(CNS)
<b>Committee responsible</b> Date announced in plenary	ECON 10.5.2011
<b>Committee(s) asked for opinion(s)</b> Date announced in plenary	ITRE 10.5.2011
<b>Discussed in committee</b>	20.10.2011
<b>Date adopted</b>	6.2.2012
<b>Result of final vote</b>	+: 27 –: 25 0: 2
<b>Members present for the final vote</b>	Amelia Andersdotter, Josefa Andrés Barea, Jean-Pierre Audy, Ivo Belet, Maria Da Graça Carvalho, Giles Chichester, Pilar del Castillo Vera, Dimitrios Droutsas, Christian Ehler, Vicky Ford, Norbert Glante, Robert Goebbels, András Gyürk, Jacky Hénin, Kent Johansson, Romana Jordan, Krišjānis Kariņš, Béla Kovács, Philippe Lamberts, Bogdan Kazimierz Marcinkiewicz, Marisa Matias, Judith A. Merkies, Jaroslav Paška, Vittorio Prodi, Herbert Reul, Michèle Rivasi, Jens Rohde, Paul Rübig, Salvador Sedó i Alabart, Britta Thomsen, Patrizia Toia, Evžen Tošenovský, Ioannis A. Tsoukalas, Claude Turmes, Marita Ulvskog, Kathleen Van Brempt, Alejo Vidal-Quadras, Henri Weber
<b>Substitute(s) present for the final vote</b>	Antonio Cancian, António Fernando Correia De Campos, Françoise Grossetête, Cristina Gutiérrez-Cortines, Jolanta Emilia Hibner, Yannick Jadot, Seán Kelly, Bernd Lange, Werner Langen, Marian-Jean Marinescu, Zofija Mazej Kukovič, Morten Messerschmidt, Vladko Todorov Panayotov, Mario Pirillo, Silvia-Adriana Ţicău
<b>Substitute(s) under Rule 187(2) present for the final vote</b>	Michael Theurer

2.12.2011

## **OPINION OF THE COMMITTEE ON TRANSPORT AND TOURISM**

for the Committee on Economic and Monetary Affairs

on the proposal for a Council Directive amending Directive 2003/96/EC restructuring Community framework for the taxation of energy products and electricity (COM(2011)0169 – C7-0105/2011 – 2011/0092(CNS))

Rapporteur: Brian Simpson

### **SHORT JUSTIFICATION**

#### **I. The Commission's proposal**

The current Energy Taxation Directive (ETD) sets minimum rates for the taxation of energy products used as motor fuel, as heating fuels, and for electricity. The minimum rates generally apply to the volume of the energy product consumed. The Commission feels that this system has a number of negative effects such as creating incentives contrary to the EU's climate change goals or distorting the internal market.

With its proposal for a revision, the Commission aims to remedy these negative effects. One of its main ideas is a new structure of energy taxation by splitting the minimum rate of taxation of energy products into two parts:

- 1) One based on the CO<sub>2</sub> emissions of the energy product. CO<sub>2</sub> taxation would be zero for all sources of energy that currently are, or will in the future, be recognised as CO<sub>2</sub>-free.
- 2) The other based on the energy content per Gigajoule, regardless of the energy product, to provide an incentive to save energy.

At the same time, the proposal aims to make the ETD more consistent with other EU policies such as the EU Emission Trading Scheme (ETS). In this regard the Commission proposes not to apply the CO<sub>2</sub> related taxation to installations subject to the ETS, i.e. including aviation.

Several further aspects of the proposal touch upon transport policy such as:

- The abolition of the possibility for Member States to differentiate between the tax treatment of commercial and non-commercial use of gas oil as motor fuel;
- The removal of the possibility to apply a lower rate of general energy consumption taxation for taxis, since it is no longer compatible with the objective of policies promoting alternative fuels, alternative energy carriers and the use of cleaner vehicles in urban transport;

- The updating of the definitions of standard tanks and special containers.

Finally, the Commission proposes to exempt shore-side electricity provided to ships while at berth in a port and to maintain existing obligations for Member States to exempt from taxation fuel used for the purpose of air and maritime navigation. Regarding inland waterways, the Commission proposes to maintain the current rules which allow Member States to apply total or partial exemptions or reductions in the level of taxation.

## AMENDMENTS

The Committee on Transport and Tourism calls on the Committee on Economic and Monetary Affairs, as the committee responsible, to incorporate the following amendments in its report:

### Amendment 1

#### Proposal for a directive

##### Recital 2

*Text proposed by the Commission*

(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.

*Amendment*

(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. ***Consistent treatment of energy sources under this Directive must therefore be guaranteed in order to provide a genuine level playing field for energy consumers regardless of the energy source used.***

### Amendment 2

#### Proposal for a directive

##### Recital 2 a (new)

*Text proposed by the Commission*

*Amendment*

***(2a) Taxation of energy products should be approached in a technology-neutral manner in order to give new technologies the opportunity to develop.***

#### *Justification*

*The Commission's policy must be completely technology-neutral, to enable new technologies to develop. Among the existing technologies, only the most sustainable and efficient should*

*continue to be retained.*

### **Amendment 3**

#### **Proposal for a directive**

##### **Recital 3**

*Text proposed by the Commission*

(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 greenhouse gas emission reduction commitments up to 2020 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. 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.

*Amendment*

(3) ***The primary purpose of energy taxation is to encourage consumers to use energy more efficiently and to obtain it from cleaner sources.*** 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 greenhouse gas emission reduction commitments up to 2020 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. 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.

### **Amendment 4**

#### **Proposal for a directive**

##### **Recital 6**

*Text proposed by the Commission*

(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

*Amendment*

(6) ***Given that an appropriate framework for energy taxation needs to be put in place,*** each of those components should be calculated on the basis of objective criteria, allowing for equal treatment of different



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. 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. 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 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.

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. 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. 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 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.

## **Amendment 5**

### **Proposal for a directive Recital 13**

*Text proposed by the Commission*

(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.

*Amendment*

(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. ***The Commission should therefore analyse this differentiation between commercial and non-commercial use in order to give transport firms the opportunity to adapt to a way out of a transitional period if an ending of this differentiation is envisaged following an appropriate impact assessment.*** 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.

**Amendment 6**

**Proposal for a directive**

**Recital 15**

*Text proposed by the Commission*

(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***

*Amendment*

(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.

***energy carriers and the use of cleaner vehicles in urban transport and should thus be removed.***

*Justification*

*Taxis should be regarded as a means of public transport helping to reduce congestion. They should therefore continue to enjoy fuel tax relief.*

**Amendment 7**

**Proposal for a directive  
Recital 19**

*Text proposed by the Commission*

(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.***

*Amendment*

(19) Directive 2003/96/EC obliges Member States to exempt from taxation electricity produced on board a craft, including while at berth in a port. In some harbours a cleaner alternative exists with the use of shore-side electricity which, however, is taxable. In order to ***avoid the production of fuel-based electricity on board a craft while at berth, and the connected local air pollution,*** pending the adoption of a more comprehensive framework in the matter, Member ***States*** should exempt the use of shore-side electricity by ships while at berth in a ***sea or an inland*** port from energy taxation. ***In addition, the production of electricity for ships at berth in a port should no longer be permissible where they have the option of using electricity from the onshore grid.***

*Justification*

*Prohibiting the production, using onboard fuel stocks, of electricity for ships at berth in a port strengthens the Commission's planned exemption arrangements and will help to reduce pollution in ports.*

## **Amendment 8**

### **Proposal for a directive Recital 19 a (new)**

*Text proposed by the Commission*

*Amendment*

***(19a) In order to promote the use of inland waterways Member States should be able to continue to apply a favourable tax treatment to them.***

## **Amendment 9**

### **Proposal for a directive Recital 19 b (new)**

*Text proposed by the Commission*

*Amendment*

***(19b) A level playing field should be created among the various modes of transport. The requirement to exempt the use of fuel in certain sectors should be phased out. In order to safeguard the competitive position of European businesses and industries, this should be done in international consultation.***

### *Justification*

*The existing requirement to exempt certain modes of transport does not accord with the principle of an open and fair European transport market. However, it is important to avoid undermining the competitive position of our businesses in comparison with that of international businesses.*

## **Amendment 10**

### **Proposal for a directive Article 1 – paragraph 1 – point 1 Directive 2003/96/EC Article 1 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***(2a) Member States which introduce a system of road use charges for vehicles or***

***articulated vehicle combinations intended exclusively for the transport of goods by road shall tax the fuel used by such vehicles only on the basis of the general energy consumption values set out in Annex I under Table A.***

*Justification*

*The 'Eurovignette' aimed to internalise external costs in order also to cover the costs of the pollution generated by the transport of goods by road. This amendment avoids taxing twice the pollution generated by the transport of goods by road.*

**Amendment 11**

**Proposal for a directive**

**Article 1 – paragraph 1 – point 5 – point b**

Directive 2003/96/EC

Article 5 – indent 3

*Text proposed by the Commission*

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

*Amendment*

– for the following uses: local public passenger transport, waste collection, armed forces and public administrations, disabled people, ambulances,

*Justification*

*Taxis should be regarded as a means of public transport helping to reduce congestion. They should therefore continue to enjoy fuel tax relief.*

**Amendment 12**

**Proposal for a directive**

**Article 1 – paragraph 1 – point 6**

Directive 2003/96/EC

Article 7

*Text proposed by the Commission*

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

*Amendment*

**1.** 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

**2. Member States may, within a transitional period to be assessed according to Article 29, differentiate between commercial and non-commercial use of gas oil used as propellant, provided that the Community minimum levels are observed and the rate for commercial gas oil used as propellant does not fall below the national level of taxation in force as set out in paragraph 1, notwithstanding any derogations for this use laid down in this Directive.**

**3. ‘Commercial gas oil used as propellant’ shall mean gas oil used as propellant for the following purposes:**

**a) the carriage of goods for hire or reward by a motor vehicle or vehicle combination intended solely for the carriage by road of goods and having a maximum permissible total laden weight of over 7,5 tonnes;**

**b) the carriage of passengers, whether by regular or occasional service, by a motor vehicle of category M2 or category M3, as defined in Directive 2007/46/CE of the European Parliament and of the Council of 5 September 2007 establishing a framework for the approval of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles.<sup>1</sup>**

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<sup>1</sup> OJ L 263, 9.10.2007, p. 1.

## **Amendment 13**

### **Proposal for a directive**

#### **Article 1 – paragraph 1 – point 11 – point a – point iii**

Directive 2003/96/EC

Article 14 – paragraph 1 – point e

*Text proposed by the Commission*

*Amendment*

(e) **until 31 December 2020**, electricity

(e) electricity directly provided to vessels

directly provided to vessels berthed in ports.

berthed in *sea and inland* ports.

*Justification*

*There should not be any deadline for this exemption if we want to reduce significantly CO<sub>2</sub>, sulphur and other harmful emission dangerous for human health in port areas. In order to promote among port authorities and generalise these initiatives, a more favourable treatment should be granted*

**Amendment 14**

**Proposal for a directive**

**Article 1 – paragraph 1 – point 13 – point a – point -i (new)**

Directive 2003/96/EC

Article 15 - paragraph 1 - point e

*Text proposed by the Commission*

*Amendment*

***-i) the paragraph is amended as follows:***

***e) the energy products and electricity used for the transport of passengers and goods by rail, underground, tramway, trolleybus or bus using electricity, natural gas or LPG as a fuel;***

*Justification*

*This amendment modifies the text of Directive 2003/96 by including electric buses and ones using natural gas and LPG. Member States should also be given a broader scope to introduce tax exemptions for railways, undergrounds and tramways, and for urban buses with low NOX and particulate emissions, which are very damaging to public health in urban environments.*

**Amendment 15**

**Proposal for a directive**

**Article 1 – paragraph 1 – point 19**

Directive 2003/96/EC

Article 27

*Text proposed by the Commission*

*Amendment*

***Exercise of the delegation***

***Delegation of powers***

***1. The power to adopt delegated acts referred to in Articles 2(5) shall be***

***The Commission shall be empowered to adopt delegated acts in accordance with***

*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.*

*Article 27a concerning the taxation of energy products and electricity.*

## **Amendment 16**

### **Proposal for a directive**

#### **Article 1 – paragraph 1 – point 20**

Directive 2003/96/EC

Articles 27a to 27c

*Text proposed by the Commission*

#### ***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.*

*Amendment*

#### ***Exercise*** of the delegation

*(1) The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.*

*(2) The power to adopt delegated acts referred to in Article 27 shall be conferred on the Commission for an indeterminate period of time from ...\*.*

*(3) The delegation of power referred to in Article 27 may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of the delegated acts already in force.*



*(4) As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.*

*(5) A delegated act adopted pursuant to Article 27 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.”*

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*\* OJ: please insert the date of the entry into force of this Directive.*

#### *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.”***

## **Amendment 17**

### **Proposal for a directive**

#### **Article 1 – point 21**

Directive 2003/96/EC

Article 29, paragraphs 1 and 2

#### *Text proposed by the Commission*

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.

#### *Amendment*

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 level of ***taxation of energy products and electricity imposed by Member States at the national and/or regional level, the minimum level of CO<sub>2</sub>-related taxation, the impact of innovation and technological developments, in particular as regards energy efficiency, the differentiation between commercial and non-commercial use of gas oil used as propellant and the perspectives to end this differentiation,*** 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 also include an overview of existing taxation provisions contained in bilateral air service agreements.*** 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.

***The first report shall assess whether there is a need to remove the exemption under***

***Article 14(1)(b) and (c) for energy products supplied for use as fuel for air navigation and in Community waters in the event that an agreement is reached to impose CO<sub>2</sub> reduction measures in the air and maritime sector within the IMO or ICAO or under the United Nations Framework Convention on Climate Change.***

***In the absence of progress at an international level, the Commission shall bring forward legislative proposals to reduce CO<sub>2</sub> emissions in both sectors, taking into account the risk of carbon leakage and the competitiveness of the sector.***

#### *Justification*

*It is important that any decision concerning the air and maritime sectors be taken at international level in order to avoid distortions in competition and the risk of carbon leakage. The Commission is urged to do all it can to achieve an international agreement, but failing this should propose the relevant legislative amendments.*

## PROCEDURE

<b>Title</b>	Amending Council Directive 2003/96/EC restructuring the Community framework for the taxation of energy products and electricity
<b>References</b>	COM(2011)0169 – C7-0105/2011 – 2011/0092(CNS)
<b>Committee responsible</b> Date announced in plenary	ECON 10.5.2011
<b>Committee(s) asked for opinion(s)</b> Date announced in plenary	TRAN 10.5.2011
<b>Rapporteur(s)</b> Date appointed	Brian Simpson 22.11.2011
<b>Discussed in committee</b>	11.10.2011          21.11.2011
<b>Date adopted</b>	22.11.2011
<b>Result of final vote</b>	+:                    31 -:                    9 0:                    1
<b>Members present for the final vote</b>	Inés Ayala Sender, Georges Bach, Izaskun Bilbao Barandica, Antonio Cancian, Michael Cramer, Philippe De Backer, Saïd El Khadraoui, Ismail Ertug, Carlo Fidanza, Knut Fleckenstein, Jacqueline Foster, Mathieu Grosch, Jim Higgins, Dieter-Lebrecht Koch, Jaromír Kohlíček, Georgios Koumoutsakos, Werner Kuhn, Jörg Leichtfried, Bogusław Liberadzki, Eva Lichtenberger, Marian-Jean Marinescu, Gesine Meissner, Hubert Pirker, David-Maria Sassoli, Vilja Savisaar-Toomast, Olga Sehnalová, Debora Serracchiani, Brian Simpson, Keith Taylor, Silvia-Adriana Țicău, Thomas Ulmer, Peter van Dalen, Dominique Vlasto, Artur Zasada, Roberts Zīle
<b>Substitute(s) present for the final vote</b>	Philip Bradbourn, Michel Dantin, Wolf Klinz, Dominique Riquet, Laurence J.A.J. Stassen, Sabine Wils

21.12.2011

## **OPINION OF THE COMMITTEE ON AGRICULTURE AND RURAL DEVELOPMENT**

for the Committee on Economic and Monetary Affairs

on the proposal for a Council Directive amending Directive 2003/96/EC restructuring the Community framework for the taxation of energy products and electricity (COM(2011)0169 – C7-0105/2011 – 2011/0092(CNS))

Rapporteur: Sergio Gutiérrez Prieto

### **SHORT JUSTIFICATION**

The proposal under consideration which will amend the Directive on the restructuring of the Community framework for the taxation of energy products and electricity (DTE) will have a considerable impact on the primary sector.

It will change the taxation regime for the energy used in agriculture. Although the Member States will still be able to apply tax exemptions (including the implementation of a level of taxation down to zero) and reductions as under the current directive, that possibility will relate solely to the energy component and to compliance with energy efficiency requirements (Article 15.3). Allowing the possibility of applying reductions in the rates of taxation on, for example, gas oil for agricultural use in the current context of falling agricultural incomes and increases in fixed production costs (of which energy costs can account for up to 30% owing to the rise in oil prices and hence in such costs) is good news in terms of European farms' viability, as no alternatives exist to the gas oil used in agricultural machinery. Nevertheless, if those tax concessions are to be linked to energy efficiency policies in order to reduce these fixed costs, they must be sufficiently flexible and incorporated into state strategies designed in conjunction with the agriculture sector and forming part of a sufficiently long cycle in order not to further burden European farmers with additional charges that would undermine their economic viability at a time when they are already hampered by the requirements of the cross-cutting aspects of the common agricultural policy.

The proposal for the amendment of Directive 2003/96 introduces a tax credit as regards CO<sub>2</sub> for certain sectors considered to be liable to a risk of carbon leakage within the meaning of Article 10a(13) of Directive 2003/87, with agriculture not numbering among those sectors.

The risk of carbon leakage in agriculture was recognised in the Commission communication ‘Roadmap for a low-carbon economy by 2050’, and the Commission must therefore be urged to amend Directive 2003/87 in parallel with Directive 2003/96 (DTE), within six months of the entry into force of the DTE, to include agriculture among those sectors eligible for this tax concession in order to ensure that, as the Commission acknowledges in paragraph 3.2 of its communication on this proposal, all the sectors or subsectors subject to carbon leakage receive the same tax treatment in the DTE.

The proposal for the amendment of the DTE improves the tax treatment of biomass when the energy capacity of the biomass is less than its volume, thus ending the tax discrimination to which it was subject in comparison with fossil fuels. This presents the opportunity to call for biomass to be awarded a more meaningful role in the energy mix of the Member States, not only as it is not a fossil fuel, but also because its production acts as a carbon sink. Also from a taxation standpoint, though departing from the scope of the DTE, the vastly differing VAT rates which Member States (and especially bordering States) apply to biomass need to be harmonised in order to avoid ‘frontier effects’ in the development of biomass between different regions and different Member States.

Finally, your rapporteur calls for the European Parliament to be included among the institutions which must be kept informed on the implementation of the DTE by the European Commission in the five years following the entry into force of that directive and welcomes the establishing of a transitional period up to 2023 for the full implementation of the changes made to the current directive.

## AMENDMENTS

The Committee on Agriculture and Rural Development calls on the Committee on Legal Affairs, as the committee responsible, to incorporate the following amendments in its report:

### Amendment 1

#### Proposal for a directive Recital 5

##### *Text proposed by the Commission*

(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

##### *Amendment*

(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 *in*

that are biomass or made from biomass.

*view of the advantages they offer as a source of renewable energy that is cheap and almost greenhouse-gas neutral.*

## Amendment 2

### Proposal for a directive Recital 20

#### *Text proposed by the Commission*

(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.

#### *Amendment*

(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, ***with the goal of ensuring the economic viability of these sectors which are already being hampered by demanding social, plant health and environmental requirements that are not sufficiently compensated for by the market. Despite this, 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. ***Such advances in energy efficiency should form part of a sufficiently long cycle and be subject to public planning and monitoring by public bodies. Member States should provide technical guidance to the operators in these sectors if additional energy efficiency requirements related to reduced tax rates are applied.*** As regards **CO<sub>2</sub>** related taxation, the treatment of the sectors concerned should ***take into account the specific carbon capture and storage capacities and the risk of carbon leakage for each of the sectors and sub-sectors concerned, as well as the possible impact on their productivity and viability. The***

*sectors producing biomass with high carbon sequestration potential should be exempted. It is essential that in Regions with an exceptional capacity to produce energy from renewable sources, energy independence of their agricultural and breeding livestock activities are encouraged.*

### **Amendment 3**

#### **Proposal for a directive Recital 21 a (new)**

*Text proposed by the Commission*

*Amendment*

*(21a) The biomass sector is a strategic sector, both for the composition of future Member State energy mixes, and for the shaping of strategies for developing high added-value biomass products for a low carbon economy, owing to the fact that biomass production acts as a carbon sink. Member States should therefore avoid applying excessively divergent rates of taxation, including in the case of VAT, in order to avert the risk of a ‘frontier effect’ arising between Member States.*

### **Amendment 4**

#### **Proposal for a directive Recital 25 a (new)**

*Text proposed by the Commission*

*Amendment*

*(25a) It should be laid down that Member States ought to develop forms of bioenergy on the basis of society’s economic needs and its interests. Member States should be encouraged to grant favourable tax treatment to the consumption of second generation biofuels. The Commission and Member*



***States should give top priority to research into second generation agrofuels in order to improve their efficiency and actual cost, as well as substantially increasing research and development funding; potential land use change and habitat conversion should be taken into account.***

## **Amendment 5**

### **Proposal for a directive**

#### **Recital 28**

##### *Text proposed by the Commission*

(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.

##### *Amendment*

(28) Every **three** years and for the first time by the end of 2015, the Commission should report to **the European Parliament and** 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.

## **Amendment 6**

### **Proposal for a directive**

#### **Article 1 – point 1**

Directive 2003/96/EG

Article 1 – paragraph 2 – subparagraph 5 a (new)

*Text proposed by the Commission*

*Amendment*

***The definition of biomass used in this Directive does not prejudice the use of a different definition in national legislation, for purposes other than those set out in this Directive.***

## **Amendment 7**

### **Proposal for a directive**

#### **Article 1 – point 2 – point a – point ii**

Directive 2003/96/EG

Article 2 – paragraph 1 – point i

*Text proposed by the Commission*

*Amendment*

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;***

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;

#### *Justification*

*The proposed restriction of the definition on denatured ethyl alcohol in Article 2 (i) is not compatible with the practice in the market and the definition of bioethanol according to the legislation in member states, for example in Sweden, Austria and Germany.*

## **Amendment 8**

### **Proposal for a directive**

#### **Article 1 – point 13 – letter b**

Directive 2003/96/EG

Article 15 – paragraph 3

*Text proposed by the Commission*

*Amendment*

‘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

‘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. ***Member States and***

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.’

beneficiaries shall ***develop targeted strategies*** 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.’

#### *Justification*

*It is important that the energy efficiency efforts demanded in return for more favourable tax treatment be coordinated by the Member States in the form of targeted strategies and in cooperation with the sector, and that sufficient time be allowed to enable a degree of flexibility and facilitate sufficient investment to produce the genuine energy savings that could not be generated without public-sector support and through annual investment.*

### **Amendment 9**

#### **Proposal for a directive**

#### **Article 1 – point 13 – letter ba (new)**

Directive 2203/96/EG

Article 15 – paragraph 3 a (new)

*Text proposed by the Commission*

*Amendment*

***3a. Member States shall provide comprehensive guidance to beneficiaries, including small and medium sized farms, concerning the application of energy efficiency requirements associated with reduced tax rates.***

### **Amendment 10**

#### **Proposal for a directive**

#### **Article 1 – point 13 – point 1 – point a – point i**

Directive 2003/96/EG

Article 16 – paragraph 1 – subparagraph 1 – introductory part

*Text proposed by the Commission*

*Amendment*

***Until 31 December 2023, Member States may, without prejudice to paragraph 5 of this Article, apply an exemption or a***

***1. Member States may, under fiscal control, apply an exemption or a reduced rate of energy consumption tax on the***

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:***

taxable products referred to in Article 2 where ***they*** are made up of, or contain, one or more of the following products:

#### *Justification*

*The aim is to reinstate the spirit of Article 16 of Directive 2003/96/EC. Biofuels will make a significant contribution to the EU's efforts to achieve its climate and energy objectives. Member States must be allowed to place fuels containing biofuels on the market. Taxation is an important lever when new types of fuels are first placed on the market.*

## **Amendment 11**

### **Proposal for a directive**

#### **Article 1 – point 14**

Directive 2003/96/EG

Article 18 – paragraph 3

#### *Text proposed by the Commission*

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.

#### *Amendment*

3. ***Spain and*** Portugal may apply levels of general energy consumption taxation on energy products and electricity consumed, ***respectively, in the Autonomous Communities of the Canary Islands and Balearic Islands and*** 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.

## Amendment 12

### Proposal for a directive

#### Article 1 – point 21

Directive 2003/96/EG

Article 29 – paragraph 1

#### *Text proposed by the Commission*

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.

#### *Amendment*

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

## Amendment 13

### Proposal for a directive

#### Article 1 – point 21

Directive 2003/96/EG

Article 29 – paragraph 3

#### *Text proposed by the Commission*

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.

#### *Amendment*

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, ***the first of which shall be produced within six months of the entry into force of this Directive***, in particular taking into account the availability of emerging evidence."

## PROCEDURE

<b>Title</b>	Amendment of Council Directive 2003/96/EC restructuring the Community framework for the taxation of energy products and electricity
<b>References</b>	COM(2011)0169 – C7-0105/2011 – 2011/0092(CNS)
<b>Committee responsible</b> Date announced in plenary	ECON 10.5.2011
<b>Opinion by</b> Date announced in plenary	AGRI 9.6.2011
<b>Rapporteur(s)</b> Date appointed	Sergio Gutiérrez Prieto 24.5.2011
<b>Discussed in committee</b>	22.11.2011
<b>Date adopted</b>	20.12.2011
<b>Result of final vote</b>	+: 30 –: 3 0: 1
<b>Members present for the final vote</b>	John Stuart Agnew, Richard Ashworth, Liam Aylward, Luis Manuel Capoulas Santos, Michel Dantin, Paolo De Castro, Albert Deß, Herbert Dorfmann, Iratxe García Pérez, Sergio Gutiérrez Prieto, Martin Häusling, Esther Herranz García, Peter Jahr, Elisabeth Jeggle, Elisabeth Köstinger, Agnès Le Brun, George Lyon, Gabriel Mato Adrover, Mairead McGuinness, Mariya Nedelcheva, James Nicholson, Wojciech Michał Olejniczak, Georgios Papastamkos, Marit Paulsen, Britta Reimers, Ulrike Rodust, Giancarlo Scottà, Czesław Adam Siekierski, Sergio Paolo Francesco Silvestris, Marc Tarabella, Janusz Wojciechowski
<b>Substitute(s) present for the final vote</b>	Spyros Danellis, Marian Harkin, Christa Kläß, Giovanni La Via, Astrid Lulling, Milan Zver

## PROCEDURE

<b>Title</b>	Amending Council Directive 2003/96/EC restructuring the Community framework for the taxation of energy products and electricity			
<b>References</b>	COM(2011)0169 – C7-0105/2011 – 2011/0092(CNS)			
<b>Date of consulting Parliament</b>	29.4.2011			
<b>Committee responsible</b> Date announced in plenary	ECON 10.5.2011			
<b>Committee(s) asked for opinion(s)</b> Date announced in plenary	BUDG 10.5.2011	ENVI 10.5.2011	ITRE 10.5.2011	TRAN 10.5.2011
	AGRI 9.6.2011			
<b>Rapporteur(s)</b> Date appointed	Astrid Lulling 10.5.2011			
<b>Discussed in committee</b>	31.8.2011	7.11.2011	19.12.2011	
<b>Date adopted</b>	29.2.2012			
<b>Result of final vote</b>	+: –: 0:	22 6 16		
<b>Members present for the final vote</b>	Burkhard Balz, Sharon Bowles, Udo Bullmann, Pascal Canfin, Nikolaos Chountis, George Sabin Cutaş, Leonardo Domenici, Derk Jan Eppink, Markus Ferber, Elisa Ferreira, Ildikó Gáll-Pelcz, Jean-Paul Gauzès, Sven Giegold, Sylvie Goulard, Liem Hoang Ngoc, Syed Kamall, Philippe Lamberts, Astrid Lulling, Arlene McCarthy, Sławomir Witold Nitras, Ivari Padar, Alfredo Pallone, Antolín Sánchez Presedo, Olle Schmidt, Edward Scicluna, Peter Skinner, Theodor Dumitru Stolojan, Sampo Terho, Corien Wortmann-Kool, Pablo Zalba Bidegain			
<b>Substitute(s) present for the final vote</b>	Elena Băsescu, Philippe De Backer, Herbert Dorfmann, Sari Essayah, Ashley Fox, Enrique Guerrero Salom, Thomas Händel, Danuta Jazłowiecka, Krišjānis Kariņš, Olle Ludvigsson, Thomas Mann, Sirpa Pietikäinen, Theodoros Skylakakis			
<b>Substitute(s) under Rule 187(2) present for the final vote</b>	Godelieve Quisthoudt-Rowohl			
<b>Date tabled</b>	8.3.2012			