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NOTE

From:	Presidency
To:	Working Party on Tax Questions - Indirect Taxation (Energy Taxation)
No. prev. doc.:	9379/14 FISC 77 ENER 173 ENV 421
Subject:	Proposal for a Council Directive amending Directive 2003/96/EC restructuring the Community framework for the taxation of energy products and electricity

Explanatory comments

• **Article 4**

Paragraph 4 – Subparagraph 3

Following the request made by one delegation, the Presidency discussed at the WPTQ in July the issue on additives/extenders provided for in Article 4(4), third subparagraph and proposed a new wording of the legal text that was fully supported by Member States.

In the light of the above, the Presidency has proposed that Article 4(4), third subparagraph be amended as follows:

- 1) the first sentence ("*Products other than energy products, if intended for use, offered for sale or used as an*") has been deleted to include all additives or extenders to motor fuels (i.e., energy products and products other than energy products);
- 2) the last sentence ("*for which minimum levels of taxation are specified in this Directive.*") has been also deleted to include cases where an additive or extender is added to motor fuel for which a minimum level of taxation is not specified in this Directive.

In addition, the Presidency has slightly revised the expression "other than water" by adding the CN code concerning the product "water", as provided for in Article 16(1), second paragraph, of the Energy Taxation Directive.

- **Article 5**

- e-Vehicles

- At the last WPTQ meeting, the Presidency submitted a room document to propose to Member States to differentiate, under Article 5 of the Energy Taxation Directive, the tax rate applicable to electricity used for electric vehicles.

- The proposal was supported by a certain number of delegations considering that the provision is optional for Member States, takes into account current and future technological developments in the market segment concerned and that it may offer revenue opportunities in the future. Conversely, a few Member States stressed that there are some technical difficulties in the implementation and monitoring of a tax measure that allows differentiation of tax rates for transport use from other uses (i.e., household, commercial, industrial, etc.).

- In the absence of a prevailing view among all the delegations at the July meeting, the Presidency included such provision in brackets in the compromise text to hear once more the views of delegations on the opportunity to include or not this option.

- **Article 9**

- The Presidency has amended this Article to align its provision with the proposed revision of Article 9a, as detailed below. Further details are given in the Presidency's room document.

- **Article 9a**

- Following the discussions at the last meeting of the WPTQ, the Presidency believes that this provision needs to be clarified more to ensure legal certainty and easy implementation. All the explanations and details with concrete examples concerning also the interplay between Article 9a, Article 11 and Article 17 are provided in the Presidency's room document.

- **Article 11**

The Presidency has amended this Article to align its provision with the proposed revision of Article 9a. Further details are given in the Presidency's room document.

- **Article 15**

Paragraph 1 – Point (a)

The Presidency has added to "pilot projects" the so-called "demonstration projects", which are intended to demonstrate the feasibility of a given production on an industrial scale, in view of its future use at full capacity. Although these are projects at a slightly more advanced stage with respect to pilot projects, they still retain all those key features and therefore the Presidency believes they should be subject to the same tax treatment. This inclusion is proposed in brackets since the Presidency intends to check whether it is acceptable for Member States.

Paragraph 1 - Point (e)

Since the proposed wording of the latest compromise text, as thoroughly discussed also during the WPTQ meeting of 25 July, was not supported by delegations, the Presidency has reinstated the previous wording:

"(e) energy products and electricity used for the carriage of goods and passengers by rail, metro, tram and trolley bus;"

- **Article 18**

The French delegation expressed the need, in line with its recent constitutional reforms, to further differentiate the rates of excise duties on energy products by increasing them at subregional level. The Presidency considers that the issue needs to be further discussed.

- **Article 21**

One delegation presented at the last meeting of the WPTQ a proposal for the amendment of paragraph 3, to give Member States the possibility to consider, for environmental policy reasons, consumption of energy products and electricity within the curtilage of a plant producing electricity as a taxable event where the consumption is for the purposes of such production. The Presidency has decided not to follow up such a request, as the proposal had not gained significant support.

- **Article 24**

One delegation requested an amendment to the definition of a standard tank so as to bring it more in line with the current provisions in customs and VAT legislation, pointing out that a discrepancy in the relevant provisions could lead to tax frauds. The Presidency has decided not to bring forward such a request since the proposal had not received support, lastly at the July WPTQ meeting.

- **Annex I and Annex II**

The Presidency presents its compromise proposal for the minima tax rates applicable to motor fuels in Annex I, Table A, and to heating fuels in Annex I, Table C.

Annex II (Tables A1, A2, A3 and Tables C1, C2, C3, C4, C5, C6) includes details on how the minimum levels of taxation specified in Annex I, Tables A and C, have been determined.

The minimum levels of taxation set out in Tables B, D, E and F of Annex I have been retained as in document FISC 77. Similarly, Tables B, D and E of Annex II remain unchanged. This will require further discussion.

In accordance with the approach followed by the Hellenic Presidency in document FISC 77, the minima tax rates are determined on the basis of the energy-related component and the CO₂-related component.

The increase of the minimum levels of taxation has been phased-out in a six-year period. This lapse of time has been considered a reasonable period to reach the new minimum levels of taxation.

Motor fuels

The minima tax rates applicable to motor fuels have been determined as from 1 January 2016, 1 January 2019 and 1 January 2022 as set out in Annex I, Table A.

Similarly to the approach suggested by the Hellenic Presidency the value of the CO₂-related component has been deemed as fixed parameter (with a tax rate set at 12 EUR / tCO₂), while the energy-related component has been increased stage-by-stage.

The starting minimum levels of taxation (1 January 2016) have been determined without any relevant changes to the suggestions set out in FISC 77. At the second (1 January 2019) and third stage (1 January 2022), the minimum levels of taxation would be increased for all energy products, except for biofuels (on account of the specific calculation procedure based on the net calorific value set out in Annex III to Directive 2009/28/EC). In general, all minimum levels of taxation have been increased, but with increases varying among the different products:

- the increase of the minimum levels of taxation for petrol is slightly lower than gas oil, in order to take into account the aim of the Commission proposal to reduce the gap between taxation of petrol and gas oil;
- lower increases have been proposed for LPG and natural gas, taking into account the current minima tax rates of these energy products, their environmentally-friendly character and the objectives of the Directive on building up minimum infrastructure for alternative fuels across the EU;
- for sustainable biofuels, the approach suggested by the Hellenic Presidency has been retained: i.e. only the energy-related component has been set out and the rate would remain at the same level during the six-years period.

Heating fuels

The minimum levels of taxation applicable to heating fuels have been determined as set out in Annex I, Table C, from 1 January 2016, 1 January 2019 and 1 January 2022.

According to the logic of the compromise text, explained in the Presidency note, the values of the minimum levels of taxation have been reduced with respect to FISC 77.

The differentiation between business use and non-business use of the energy products, laid down in the current 2003/96/Directive, has been retained.

Along the line of the approach suggested by the Hellenic Presidency the value of the energy-related component has been deemed as fixed parameter (with a tax rate set out at 0,20 EUR / GJ), while the CO2-related component has been increased stage-by-stage. The value of the CO2-related component for business use is equal to half of that for non-business use.

In any case:

- the minimum level of taxation for Gas Oil (both business and non-business use) has been set to 21€/1000 l and 0,6 €/GJ;
- the minimum level of taxation for Heavy Fuel Oil (only business use) has been set to 15€/1000 l and 0,38 €/GJ;

in order to avoid from falling below the current level of taxation for Gas Oil and Heavy Fuel Oil set out in Directive 2003/96/EC.

And:

- the minimum level of natural gas (only business use) has been set at 0,30 €/GJ in order to avoid from falling below the minimum level of taxation used for the purposes of Article 9a.

The Presidency informs all delegations that all the figures shown in the tables attached to the compromise text need to be further refined to take into account decimals.