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Proposal for a

COUNCIL DIRECTIVE

**RESTRUCTURING THE COMMUNITY
FRAMEWORK FOR THE TAXATION OF ENERGY PRODUCTS**

(presented by the Commission)

PROPOSAL FOR A DIRECTIVE RESTRUCTURING THE COMMUNITY FRAMEWORK FOR THE TAXATION OF ENERGY PRODUCTS

EXPLANATORY MEMORANDUM

I The policy context: a single market framework enabling a revenue neutral restructuring of tax systems to sustain employment and the environment.

This proposal for a Directive modernizes the Community system for the taxation of mineral oils and extends its scope to all energy products, with a view to improving the functioning of the internal market.

In presenting this initiative, the Commission considers that it has a twofold responsibility:

- to provide the Member States with a coherent framework, which will encourage them to adopt appropriate measures and,
- to orient in a pro-employment manner those policy choices which lie within the Community's competence.

In effect, the Commission is thus meeting the obligation contained in Article 10 of Directive 92/82/EEC to review the minimum rates of excise duty on mineral oils. It is also responding to the Council's request, expressed following the deadlock of negotiations on the CO₂/energy tax, that it should present new proposals in the field of the taxation of energy products. Lastly, it takes into account the European Parliament opinion on the Commission's report on minimum excise duty rates,¹ which asks it to define a consistent basis for taxation covering both mineral oils and competing products.

This proposal also constitutes the first legislative initiative of the fiscal strategy² presented by the Commission in October 1996 and endorsed by the European Council in Dublin in December 1996. It also has to be seen in the context of the political process initiated by the Commission's 'Confidence Pact for Employment'³. It seeks to refocus fiscal policy

¹ COM(95) 285 final of 13.9.95.

² SEC (96) 487 final

³ SEC (96) 1 final

towards combatting unemployment, whilst respecting internal market principles. The proposal also encourages Member States to respect the objective of fiscal neutrality by reducing statutory charges on labour at the same time as introducing the new common system of taxing energy products.

The present proposal fits into an overall political context. It does not introduce a new tax, but aims to establish a new Community framework for the taxation of energy products which makes it possible to restructure national tax systems and to better attain national objectives of employment, environment, transport and energy policy, while respecting a key Community achievement: the Single Market.

II The timing : need for action at a Community level

A number of Member States are currently looking at ways of restructuring and reforming their tax systems along the lines suggested by the Commission particularly with a view to addressing the problem of unemployment. The Commission considers it vital that such reform should place in a co-ordinated fashion since it is clear that Member States' room for manoeuvre at a purely national level is increasingly limited within the context of the Single Market. The timing of this proposal is therefore particularly opportune and, moreover, represents the first concrete action at Community level designed to give Member States appropriate fiscal tools to carry out environment and employment policies.

III Single market and flexibility: the essential elements for any Community strategy for taxing energy products

The starting point for this proposal for a Directive is that:

- the single market must be the common basis for all policies involving the taxation of energy products (policies such as the restructuring of taxation, energy, transport, the environment, etc.)
- over and above this common basis, any Community system of taxation must be an efficient instrument at the service of the Member States.

However, neither of these two conditions is met today.

The "common basis" derived from the single market is only partial. A Community system of taxation today applies only to mineral oils and the excise duties charged on them. The other energy products and taxes other than excise duties fall within the discretion of each Member State. This situation gives rise to a multitude of problems.

First, there is a proliferation of national taxes which, because they differ widely in application, in the way they are calculated or in their rates, undermine the unity of the single market and the liberalisation of the energy markets, in particular in the fields of natural gas and electricity.

Second, the non-harmonisation of national rates for the taxation of energy products (whether these be mineral oils, taxed by all the Member States pursuant to Community texts but at widely differing rates, or other products, which may or may not be taxed, depending on the choice of the Member States) leads to distortions due to excessive tax competition. A Member State wishing to increase or introduce a tax on a product other than mineral oils such as, for example gas, may be prevented from doing so if that product is not taxed or taxed at a lower rate in a neighbouring country, for fear of causing a relocation of consumption. However, as stressed by the document "Taxation in the European Union" presented by the Commission to the informal Council meeting at Verona, excessive competition in the tax area "is a cause of concern because of its potential negative effects, particularly on tax revenues of Member States, on the efficient allocation of economic resources within the EU, and on competitiveness and employment". In other words the lack of a Community structure for taxation of all energy products is inhibiting Member States from pursuing appropriate tax reforms.

Lastly, it is undeniable that the lack of harmonisation between Member States for the same fuels directly causes distortions on the markets, and affects the choices of consumers and firms. This is particularly true in frontier areas, where there is evidence of relocation of the consumption of motor fuels and heating fuels.

In the light of all these facts, it is clear that it is becoming increasingly urgent to strengthen the rules of the single market. This is why the Commission has decided to present a new proposal for a Directive to the Council.

At the same time, the present system does not give Member States sufficient freedom of manoeuvre for their political action. In this context, it should be recalled that the Essen European Council asked the Commission to present new proposals enabling Member States which so wished to apply a CO₂/Energy Tax.

The diversity of national objectives is today an incontrovertible fact for which allowance has to be made in any Community system. However, it cannot be expressed unless it is framed by the rules of the single market, if it is not to lead to the fragmentation mentioned above. Flexibility combined with the definition of certain common rules, as envisaged by this proposal for a Directive, is in fact an effective instrument, which gives Member States greater freedom for action.

It thus offers the Member States the opportunity of making greater use of the taxation of energy products for environmental purposes. It is an established fact that, in this area, the present rules are sometimes too rigid. For example, under Article 8(4) of Directive 92/81/EEC, any measure to differentiate the taxation of a product on the basis of environmental standards must be authorised by the Council.

It also offers some scope for restructuring national tax systems in favour of the labour factor. This is a key aspect for the Commission, which has broadly designed this proposal for a Directive as the tangible expression of the encouragement it has given the Member States since the 1993 White Paper "Growth, Competitiveness, Employment", the Confidence Pact for Employment again restates that it is necessary to reverse the present trend towards imposing the burden of taxation on employment.

Admittedly, the Commission intends, through this proposal for a Directive, to provide the Member States with a framework for target-oriented political action. Although, in accordance with the principle of subsidiarity, the responsibility for the political choice is entirely incumbent on the Member States, it considers that the opportunity they are being offered by this proposal to restructure taxation in a direction which is more favourable to the factor labour is an essential contribution. It therefore invites the Member States to give preference, in their policy choices, to the objective of tax neutrality.

IV New measures proposed by the Commission

The new measures proposed by the Commission are the following.

The scope of the Community system of taxation is extended to all energy products

The Commission is proposing that the scope of taxation be extended beyond the mineral oils covered by Directives 92/81/EEC and 92/82/EEC, to cover in the future the other competing sources of energy namely :

- coal, coke, lignite, bitumens and products derived from them;
- natural gas;
- electricity.

It is clear that all these products, inasmuch as they are used as heating-fuels, are directly or indirectly substitutable and therefore should all come with the same taxation framework.

The treatment of electricity

There are two possible ways of bring electricity within the scope of the taxation arrangements : by taxing the fuels used in the production of electricity (input tax) or by taxing the electricity itself (output tax).

The Commission has proposed harmonisation on the basis of output taxation for the following reasons :

- it is the only method by which the general indirect taxation principle of applying tax in the country of consumption can be uniformly achieved;
- electricity can be traded within and between countries without having been taxed thus avoiding double taxation in the country of consumption;
- Member States can differentiate between electricity used by final consumers and industry and thus apply differential taxes (this is the practise in nearly all Member States who currently tax electricity);
- it is the only means by which the tax burden on energy intensive industry can be reduced.

On the other hand, output taxation does not allow Member States to directly differentiate tax levels in line with the environmental quality of the fuel used. To overcome this, the Commission is proposing to allow Member States :

- a) to add an additional (non-harmonised) input tax in the case of non-environmentally desirable fuels; and
- b) to refund to electricity producers who use environmentally preferable fuels the tax paid by the final consumer.

The setting of new minimum levels of taxation for all energy products

The Commission proposes that the Community minimum levels on mineral oils set by Directive 92/82/EEC (which were agreed in 1992 and are therefore, in many cases, now substantially below the rates applied by Member States) be up-rated and that minimum levels be created for products other than mineral oils.

The Commission has chosen to retain the structure of Community minimum levels contained in Directive 92/82/EEC and therefore proposes setting different minimum levels for the following three categories:

- energy products used as motor fuels
- energy products used as motor fuels for certain industrial and commercial purposes (for which very low minimum levels of taxation are set)
- energy products used as heating fuels.

It should be emphasised that energy products used other than as motor fuels or heating fuels do not fall within the scope of the tax. In particular, this means that products used in industry for chemical reduction purposes or as raw materials will not be taxed.

The Commission proposes the establishment of a timetable for up-rating these Community minimum levels (1998, 2000, 2002) with the following objectives:

- as regards motor fuels, the progressive approximation of rates between different products, in particular gas oil and petrol;
- for heating fuels and motor fuels used for industrial and commercial purposes, taxation on the basis of the energy value, at the end of a transitional period for products that this proposal brings within the scope of taxation.

The minimum levels of taxation for the last stage (2002) are put forward as target rates and will need to be confirmed as binding in a subsequent report and proposal from the Commission. In its report, the Commission will pay particular attention to the measures taken by Member States to avoid any increase in their overall tax burden.

Flexibility for the pursuit of objectives of environmental, transport or energy policy

This proposal for a Directive aims to provide a framework for the action of the Member States in the fields mentioned above.

With this in mind, the Commission is proposing that henceforth all indirect taxes (with the exception of VAT) borne by a product be taken into account in order to assess compliance with the Community minimum levels. It is thus following the logic of the diversification of national taxes applied by the Member States to energy products (excise duties, taxes on energy, on emissions, etc.).

The Commission is also proposing to offer the Member States a number of options enabling them to pursue more ambitious environmental policies. This flexibility is entirely consistent with the environmental objectives agreed by the European Union at the Council meeting on energy/environment held in October 1990 (stabilization of CO₂ emissions at 1990 levels by the year 2000) and as a party to the United Nations Framework Convention on Climate Change. It proposes for example that the Member States may differentiate, without prior authorisation if they comply with the Community minimum levels, the rates of taxation applicable to a product on the basis of environmental standards, or that the Member States be authorised to apply reduced rates or exemptions from tax to certain products or uses (biofuels, renewable energy sources, rail transport, inland waterway navigation, heat produced in combined generation installations).

More particularly as regards natural gas, the Commission proposes, in cases where the gas market is entering a development phase, to authorise Member States to apply tax exemptions or reductions for a period which may not exceed 10 years after the entry into force of this Directive. The purpose of this provision and those encouraging the development of alternative sources of energy is to reinforce the Union's security of supply by the diversification of sources of energy.

Flexibility is also present in Article 16 of the proposal, where the Commission proposes that should Member States wish to pursue specific policy objectives, they may be authorized to disregard the Community minimum levels. In the case of transport policy, this possibility is expressed even more strongly in order to facilitate the introduction of efficient transport pricing instruments (notably road pricing), which can more adequately address transport problems such as congestion and air pollution. As set out in the Commission's Green Paper on Fair and Efficient Pricing in Transport (Com(95)69 final), the introduction of such instruments should not, by itself, lead to an increase in the total tax burden on transport.

Measures to assist firms

In order that the extended scope of the Directive and the setting of new Community minimum levels do not harm the competitiveness of European firms vis-à-vis third countries, the Commission is proposing:

- for firms whose energy costs are between 10% and 20% of production costs, that Member States may refund some or all of the tax paid by a firm on the proportion of their energy costs in excess of 10% of its total production costs;
- for firms whose energy costs are higher than 20% of production costs, that Member States be obliged to refund all the tax paid on the proportion of their energy costs in excess of 10% of their total production costs.

V Benefits to be expected from the adoption of the Directive

If it is adopted, this proposal for a Directive will have positive spin-offs for the Member States, for European firms and citizens.

For Member States

By establishing a common regulatory framework for the taxation of energy products, this proposal for a Directive will give Member States greater freedom of manoeuvre for their national policies.

First, the reduction in tax competition (resulting from the harmonization of national rates of taxation on energy products) will enable Member States to regain complete tax sovereignty. Such freedom could, in particular, be exercised in the field of environmental policy.

Second, the creation of a new source of tax revenue will open up a major possibility for Member States: they will be able to reduce the compulsory levies on labour, thereby helping to cut unemployment. It is acknowledged that this possibility is at present restricted by 'the difficulty experienced by Member States of finding suitable and sufficient budgetary compensation to offset the revenue losses'⁴. The Commission intends to set this proposal for a Directive within the context of tax neutrality and strongly encourages Member States to implement it as part of a policy to boost employment.

For firms

The proposal for a Directive lays the foundations for an efficient market and fairer competition. Firms have constantly called for the practical application of these principles to energy products, as was the case, for example, at the Lisbon Conference on excise duties organized by the Commission in November 1995.

They will undoubtedly benefit from the gains deriving from the improvement (through the elimination of distortions in the treatment of competing energy products) in the operation of the energy market. They will also directly benefit from the introduction of a more level playing field within the European Union as regards competition. Firms are at present confronted with disparities between Member States in the tax treatment of energy products. Where energy costs account for a significant proportion of production costs, these disparities can have a direct influence on their competitiveness. The proposal is aimed, therefore, at reducing these disparities by establishing a level playing field.

⁴ Taxation in the European Union - Report on the development of tax systems, COM(96) 546 final.

As regards the competitiveness of Community firms vis-à-vis third countries, the Commission is fully aware of the potential impact of increasing taxation on energy. For that reason, the proposal for a Directive provides for measures to reduce the tax burden on energy-intensive firms. Reinforcing the energy efficiency which will result from the introduction of the new Community framework for taxing energy products will also enhance the competitiveness of Community firms in the medium term.

Finally, the benefits to be derived from a reduction in taxes on employment should not be disregarded.

For the citizen-consumer

As demonstrated by the tables in the annex, the proposal for a Directive will result in only a very limited rise in consumer prices, and in a restricted number of Member States, where two consumers products, unleaded petrol and gas oil, are concerned. These rises are essential if the disparities resulting from the current absence of approximation of national rates of taxation on energy products are to be reduced.

Consumers are very sensitive to price differences in different places of consumption (particularly in border areas) resulting from the non-harmonization of national rates. However, unlike price savings deriving from enhanced efficiency of the market, those resulting from tax disparities do not correspond to any structural reality and can lead, in the medium term, to distortions with adverse effects on the economy. In promoting the approximation of national rates, the proposal for a Directive aims to eliminate these very defects.

The consumer should also benefit from the improvement in the charges as regards the environment and transport which implementation of the proposal for a Directive will bring and, of course, from the enhanced quality of the environment in the medium term.

Lastly, using the revenue generated by the taxation of energy products to bring down the cost of labour and reduce the unemployment which may result should primarily benefit the citizen-consumer.

VI Conclusion

Without introducing a new tax, this proposal fits in with the objectives of deepening the internal market, greater respect for the environment and the fight against unemployment, by setting up a Community framework for taxing energy products, thus facilitating the restructuring of national tax systems.

It is becoming increasingly obvious that, particularly in the field of environmental policy, Member States wait for Community instruments which enable them to pursue their own policies under the principle of subsidiarity. This proposal should provide them with such an opportunity.

It is also true that the fears generated by any tax project should not be disregarded. Consumers fear a rise in the price of motor or heating fuels, while firms and Member States fear losses in competitiveness. However, the Commission does not intend that this proposal should lead to any overall increase in tax burden and this will be the case provided that Member States adopt the revenue neutral approach which the Commission strongly advocates.

Against this background, Macro-economic simulations carried out by the Commission indicated that the proposal for a Directive would have a positive economic impact on economic growth and job-creation. They indicated in particular that, the revenue neutral approach would lead to the creation of new jobs and that the net effect per household (around 54 ECU per household in 2000) of this proposal would not result in any fall in private consumption. In the present economic climate, there is no doubt that these opportunities should be made available to the Member States, and to the Community as a whole.

Table 1: Effects on national excise duty rates as a consequence of the proposed increase in the EU minimum rate on unleaded petrol

Member State	Excise duty January 1997	Excise duty January 1998 (assumed rates*)	Effect on national excise duty rates		Relative effect on pump price
			Increase in ecu	Increase in %	
Austria	416	435	0	0%	0%
Belgium	510	534	0	0%	0%
Denmark	447	467	0	0%	0%
Finland	536	561	0	0%	0%
France	576	602	0	0%	0%
Germany	503	527	0	0%	0%
Greece	350	366	51	14%	9%
Ireland	403	422	0	0%	0%
Italy	534	558	0	0%	0%
Luxembourg	349	365	52	14%	8%
Netherlands	530	555	0	0%	0%
Portugal	469	490	0	0%	0%
Spain	363	380	37	10%	6%
Sweden	494	517	0	0%	0%
United Kingdom	501	524	0	0%	0%
EU min	287	417	130	45%	-

* For the period between 1993 and 1997 the annual EU average increase, in real terms, of excise duty on unleaded petrol was 2,4 %.

The table above assumes a real increase in excise duty rates from 1997 to 1998 of 1,3 % plus inflation.

Table 2: Effects on national excise duty rates on diesel as a consequence of the proposed increase in the EU minimum rate on diesel

Member State	Excise duty January 1997	Excise duty January 1998 (assumed rates*)	Effect on national excise duty rates		Relative effect on pump price
			Increase in ecu	Increase in %	
Austria	291	301	9	3%	1%
Belgium	292	302	8	3%	1%
Denmark	308	319	0	0%	0%
Finland	285	295	15	5%	3%
France	358	370	0	0%	0%
Germany	319	330	0	0%	0%
Greece	247	255	55	21%	11%
Ireland	352	364	0	0%	0%
Italy	390	404	0	0%	0%
Luxembourg	254	263	47	18%	9%
Netherlands	320	331	0	0%	0%
Portugal	266	276	34	12%	7%
Spain	264	273	37	14%	7%
Sweden	355	368	0	0%	0%
United Kingdom	501	519	0	0%	0%
EU min	245	310	65	21%	-

* For the period between 1993 and 1997 the annual EU average increase, in real terms, of excise duty on diesel was 1,3 %. The table above assumes a real increase in excise duty rates from 1997 to 1998 of 1,3 % plus inflation.

**Proposal for COUNCIL DIRECTIVE/.../EC
restructuring the Community framework for the taxation of energy products**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 99 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the Economic and Social Committee,

Whereas the scope of Directive 92/81/EEC¹ on the harmonization of the structures of excise duties on mineral oils and of Directive 92/82/EEC² on the approximation of the rates of excise duties on mineral oils is restricted to mineral oils;

Whereas the absence of Community provisions imposing a minimum rate of taxation on energy products other than mineral oils adversely affects the proper functioning of the internal market;

Whereas, in accordance with Article 130r of the Treaty, environmental protection requirements must be integrated into the definition and implementation of other Community policies;

Whereas, at the Council meeting on energy/environment held in October 1990, the European Union set itself the objective of stabilizing CO₂ emissions at 1990 levels by the year 2000;

Whereas, as a party to the United Nations Framework Convention on Climate Change, the European Union has undertaken to take the measures required to stabilize greenhouse gas concentrations in the atmosphere at a level that will prevent dangerous interference with the climate system;

Whereas the taxation of energy products is one of the instruments available for achieving these objectives;

¹ Council Directive 92/81/EEC of 19 October 1992 on the harmonization of the structures of excise duties on mineral oils (OJ No L 316, 31.10.1992, p. 12).

² Council Directive 92/82/EEC of 19 October 1992 on the approximation of the rates of excise duties on mineral oils (OJ No L 316, 31.10.1992, p. 19).

Whereas, in accordance with the guidelines laid down in the Commission White Paper on growth, competitiveness and employment, the introduction of new arrangements should not result in an increase in the overall tax burden in Member States;

Whereas implementation of the principle of tax neutrality will contribute to the restructuring and the modernisation of tax systems by encouraging behaviour conducive to greater protection of the environment and increased labour use;

Whereas, however, determination of the arrangements for ensuring tax neutrality is a matter for each Member State;

Whereas energy prices are key parameters of Community energy and transport policies;

Whereas taxation partly determines the price of energy products;

Whereas the proper functioning of the internal market and the achievement of the objectives of other Community policies require minimum levels of taxation to be laid down at Community level for all energy products, including electricity;

Whereas Member States should nevertheless be given the flexibility necessary to define and implement policies appropriate to national circumstances;

Whereas the Member States wish to introduce or retain different types of taxation on energy products;

Whereas, to that end, Member States should be permitted to comply with the Community minimum taxation levels by taking into account the total charge of taxes which they have chosen to apply (excluding VAT);

Whereas the possibility of applying differential national rates of taxation to the same product is also consistent with that objective, provided that Community minimum levels and internal market and competition rules are respected;

Whereas it is necessary to establish different Community minimum levels of taxation according to the use of the energy products;

Whereas energy products used as a motor fuel for certain industrial and commercial purposes and those used as a heating fuel are normally taxed at lower levels than those applicable to energy products used as a motor fuel;

Whereas appreciable differences in the national levels of taxation applied by Member States are detrimental to the proper functioning of the internal market;

Whereas the establishment of appropriate Community minimum levels may enable existing differences to be reduced;

Whereas the minimum levels of taxation must reflect the competitive position of the different energy products;

Whereas it would be advisable in this connection to base the calculation of these minimum levels as far as possible on the energy value of the products;

Whereas, however, this method should not be applied to motor fuels and cannot be applied, in respect of other uses, without a transition period;

Whereas the minimum levels of taxation applicable to energy products other than mineral oils must be increased gradually;

Whereas it is necessary, in order to prevent a loss of value in Community minimum levels, to draw up a schedule of biennial increases in these minimum levels and to provide for the Council, not later than 1 January 2001, to lay down new levels for a further period;

Whereas it is necessary to provide for certain compulsory exemptions at Community level;

Whereas Member States should be permitted to apply, if they so wish, certain other exemptions or reduced levels of taxation below the Community minimum levels within their territory, where that would not be detrimental to the proper functioning of the internal market and would not result in any distortions of competition;

Whereas such exemptions or reduced levels of taxation would greatly facilitate the introduction of more efficient transport pricing instruments;

Whereas, in particular, in order to promote the use of alternative energy sources, renewable forms of energy must be able to enjoy preferential treatment;

Whereas it is necessary to provide for a procedure authorizing the introduction by Member States, for a set period, of other exemptions or reduced levels of taxation;

Whereas it is necessary to introduce a procedure for the regular review of such exemptions or reductions;

Whereas Member States should be authorized to grant tax refunds to firms incurring investment expenditure aimed at improving energy efficiency and those whose energy costs represent a substantial proportion of the value of their sales;

Whereas, for information purposes, provision should be made for the Member States to notify the Commission of certain national measures;

Whereas such notification does not release Member States from the obligation, laid down in Article 93(3) of the Treaty, to notify certain national measures;

Whereas the scope of Directive 92/12/EEC of 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products³ must be extended to all products and indirect taxes covered by this Directive,

HAS ADOPTED THIS DIRECTIVE:

³ Council Directive 92/12/EEC of 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products (OJ No L 76, 23.3.1992, p. 1).

I. Scope

Article 1

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

2. When implementing this Directive, Member States shall endeavour to avoid any increase in their overall tax burden. In order to attain this objective Member States shall endeavour, in particular, to reduce at the same time statutory charges on labour.

Article 2

1. For the purposes of this Directive, "energy products" shall cover the products specified below:

- | | | |
|-----|----------------------------------|----------------|
| (a) | products falling within CN codes | 1507 to 1518; |
| (b) | products falling within CN code | 2207; |
| (c) | products falling within CN codes | 2701 to 2715; |
| (d) | products falling within CN codes | 2901 and 2902; |
| (e) | products falling within CN code | 2905; |
| (f) | products falling within CN code | 3403; |
| (g) | products falling within CN code | 3811; |
| (h) | products falling within CN code | 3817; |
| (i) | products falling within CN codes | 4401 and 4402; |

2. This Directive shall also apply to:

- a) electricity falling within CN code 2716;
- b) heat generated during the production of electricity.

3. In addition to the taxable products listed in paragraph 1, any other product intended for use, offered for sale or used as motor or heating fuel, or as an additive or extender in such fuel, shall be taxed as motor or heating fuel respectively.

4. References in this Directive to codes of the combined nomenclature shall be to those of the version in force on 1 October 1996.

Article 3

References in Directive 92/12/EEC to "mineral oils" and "excise duty" (insofar as it applies to mineral oils) shall be interpreted as covering all energy products and national indirect taxes referred to respectively in Articles 2 and 4(3) of this Directive.

II. Levels of taxation

Article 4

1. The levels of taxation which Member States shall apply to the energy products listed in Article 2 may not be less than the minimum levels prescribed in this Directive.

2. Taxable energy products other than those for which a minimum level of taxation is specified in this Directive shall be subject to taxation, according to use, at a level which is not below the minimum level applicable to the equivalent heating fuel or motor fuel.

3. For the purpose of this Directive, "level of taxation" shall mean the total charge levied in respect of all indirect taxes (except VAT) calculated directly or indirectly on the quantity of product consumed.

Article 5

1. Member States may apply differentiated rates of taxation according to the use or quality of a product provided that they respect the minimum levels of taxation set out in this Directive and that they are compatible with Community law.

2. When, for environmental and/or health policy reasons, different standards are established at a Community level for products referred to in this Directive, Member States wishing to apply differential rates of taxation to a product according to the quality of that product shall incorporate criteria established at Community level.

Article 6

1. As from 1 January 1998, the minimum levels of taxation applicable to motor fuels shall be fixed as follows:

- for petrol: ECU 417 per 1000 litres at a temperature of 15°C. Moreover, Member States shall apply to leaded petrol a rate of taxation above that charged on unleaded petrol.
- for gas oil: ECU 310 per 1000 litres at a temperature of 15°C;
- for kerosene: ECU 310 per 1000 litres at a temperature of 15°C;
- for liquid petroleum gas: ECU 141 per 1000 kg;
- for natural gas: ECU 2,9 per gigajoule.

Article 7

1. Notwithstanding Article 6 of this Directive, the minimum levels of taxation applicable to the following products used as motor fuel for the purposes set out in paragraph 2 of this Article shall be fixed as follows:

- for gas oil: ECU 32 per 1000 litres at a temperature of 15°C;
- for kerosene: ECU 30 per 1000 litres at a temperature of 15°C;
- for liquid petroleum gas: ECU 41 per 1000 kg;
- for natural gas: ECU 0,3 per gigajoule;

2. This Article shall apply to the following industrial and commercial purposes:

- (a) for agricultural, horticultural or piscicultural works, and in forestry;
- (b) for stationary motors;
- (c) in respect of plant and machinery used in construction, civil engineering and public works;
- (d) for vehicles intended for use off the public roadway or which have not been granted authorisation for use mainly on the public highway;

- (e) for passenger transport and captive fleets which provide service to public bodies. However, Member States may limit the scope of the reduced level of taxation to local passenger transport.

In the case of the use specified in point (e), this Article shall only apply in respect of LPG and natural gas.

Article 8

As from 1 January 1998, the minimum levels of taxation applicable to heating fuels shall be fixed as follows:

- for gas oil: ECU 21 per 1000 litres at a temperature of 15°C;
- for heavy fuel oil falling within CN code 2710 00 74: ECU 18 per 1000 kg;
- for other heavy fuel oil falling within CN code 2710: ECU 22 per 1000 kg;
- for kerosene: ECU 7 per 1000 litres at a temperature of 15°C;
- for liquid petroleum gas: ECU 10 per 1000 kg;
- for natural gas: ECU 0,2 per gigajoule;
- for solid energy products : ECU 0,2 per gigajoule.

Article 9

As from 1 January 1998, the minimum level of taxation on electricity and heat generated during its production shall be fixed at ECU 1 per megawatt-hour.

Article 10

1. The minimum levels of taxation laid down in this Directive shall be amended on 1 January 2000, to the amounts shown in annex I.

2. Not later than 1 January 2001, the Council, acting unanimously after consulting the European Parliament, shall fix, on the basis of a report and a proposal from the Commission, the minimum levels of taxation for a further period beginning on 1 January 2002 and shall adopt such other measures as may be appropriate to improve the functioning of the system of taxation of energy products. Until the Council adopts new levels of taxation on the basis of the Commission report and proposal, Member States shall treat the amounts shown in Annex I as target levels of taxation from 2002.

The report by the Commission and the consideration by the Council shall take into account the proper functioning of the internal market, the real value of the levels of taxation, the achievement of environmental policy objectives and the other objectives of the Treaty. It shall also include an analysis of the measures taken by Member States to achieve tax neutrality in implementing this Directive and the Commission's proposal shall take full account of this factor.

Article 11

Member States may express their national levels of taxation in units other than those specified in Articles 6 to 9 of this Directive provided that the corresponding levels of taxation, following conversion into those units, are not below the minimum levels specified in this Directive.

Article 12

1. The value of the ECU in national currencies to be applied to the value of the levels of taxation shall be fixed once a year. The rates to be applied shall be those obtaining on the first working day of October and published in the Official Journal of the European Communities and shall have effect from 1 January of the following calendar year.

2. Member States may maintain the amounts of taxation in force at the time of the annual adjustment provided for in paragraph 1 if the conversion of the amounts of the level of taxation expressed in ECU would result in an increase of less than 5% or ECU 5, whichever is the lower amount, in the level of taxation expressed in national currency.

III. Exemptions and tax refunds

Article 13

1. In addition to the general provisions set out in Directive 92/12/EEC on exempt uses of taxable products, and without prejudice to other Community 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:

- (a) Energy products used for purposes other than as motor fuels or as heating fuels. For the purposes of this Directive, heating fuels shall not include energy products used principally for the purposes of chemical reduction, and in metallurgical and electrolytic processes. Member States shall also exempt electricity used principally for the purposes of chemical reduction, and in metallurgical and electrolytic processes.

- (b) Energy products used to produce electricity and heat generated during its production. However, Member States may, for reasons of environmental policy, subject these products to taxation without having to respect the minimum levels of taxation laid down in this Directive. In such case, the taxation of these products shall not be taken into account for the purpose of satisfying the minimum level of taxation on electricity laid down in Article 9 of this Directive.

- (c) Energy products supplied for use as fuels for the purpose of air navigation other than private pleasure flying for as long as such products are obliged to be exempted under international obligations.

For the purposes of this Directive, "private pleasure flying" shall mean the use of an aircraft by its owner or the natural or legal person who enjoys its use either through hire or through any other means, for other than commercial purposes and in particular other than for the carriage of passengers or goods or for the supply of services for consideration or for the purposes of public authorities.

Member States may limit the scope of this exemption to supplies of jet fuel (CN code 2710 00 51);

- (d) Energy products supplied for use as fuel for the purposes of navigation within Community waters (including fishing), other than in private pleasure craft.

For the purposes of this Directive, "private pleasure craft" shall mean any craft used by its owner or the natural or legal person who enjoys its use either through hire or through any other means, for other than commercial purposes and in particular other than for the carriage of passengers or goods or for the supply of services for consideration or for the purposes of public authorities.

2. Member States may limit the scope of the exemptions provided for in paragraph 1 (c) and (d) to international and intra community transport. In addition, where a Member State has entered into a bilateral agreement with another Member State, it may also waive the exemptions provided for in paragraphs 1 (c) and (d) of this Article. In such cases, Member States may apply a level of taxation below the minimum level set out in this Directive.

Article 14

1. Without prejudice to other Community provisions, Member States may apply total or partial exemptions or reductions in the level of taxation to:

- (a) energy products used under fiscal control in the field of pilot projects for the technological development of more environmentally-friendly products or in relation to fuels from renewable resources;
- (b) energy products falling within CN codes 1507 to 1518, 2207 20 00 and 2905 11 00, 4401 and 4402;
- (c) forms of energy which are of solar, wind, tidal, geothermal origin or from biomass or waste;
- (d) forms of energy which are of hydraulic origin produced in hydroelectric installations with a capacity of less than 10 MW;
- (e) heat generated during the production of electricity;
- (f) energy products used for the carriage of goods and passengers by rail;
- (g) energy products used for navigation on inland waterways other than in private pleasure craft;
- (h) natural gas in Member States whose gas market is in the process of actual development for as long as the share of gas in the domestic and industrial market is less than 10%, and for a period of no more than 10 years after the coming into force of this Directive.

2. Member States shall be free to give effect to the exemptions or reductions in the level of taxation mentioned in this Article by refunding all or part of the amount of taxation paid.

3. The Commission shall report to the Council on the fiscal, economic, agricultural, energy, industrial and environmental aspects of the exemptions or reductions granted in accordance with Article 14 (1) (b) before 1 January 2001 and will make proposals as to whether they should be abolished, modified or extended.

Article 15

1. Member States may refund all or part of the amount of tax paid in relation to investment expenditure incurred by a firm in improving the efficient use of energy up to a limit of 50% of eligible expenditure incurred.

2. Member States may refund some or all of the amount of tax paid by a firm on any part of its non transport related energy costs which exceeds 10% of its total production costs.

However, when the part of non-transport related energy costs of a firm exceeds 20% of its total production costs, Member States shall reimburse the whole of the tax paid by the firm on the part of its non-transport related energy costs which exceeds 10% of its total production costs.

The net amount of tax paid by a firm following the refunds provided for in the two preceding sub-paragraph shall not be less than 1% of the value of its sales.

3. Member States may also refund to the producer some or all of the amount of tax paid by the consumer on electricity and heat generated during its production in the case of electricity produced from products specified in Article 14 paragraphs 1 (b), (c) and (d).

Article 16

1. In addition to the provisions set out in the previous Articles, Member States may be authorised to apply, for specific policy reasons and for a specified period, exemptions or levels of taxation below the minimum levels specified in this Directive.

In particular, a Member State may be authorised to apply levels of taxation on motor fuels between 100% and 60% of the minimum levels specified in this Directive if it introduces or modifies, on a non discriminatory basis, specific charging systems for road transport targeting recovery of transport costs, such as infrastructure, congestion, environmental costs.

2. A Member State wishing to introduce such a measure shall accordingly inform the Commission and shall also provide the Commission with all relevant or necessary information and an evaluation of the expected effects of the measure.

The Commission shall examine the request, taking into account, inter alia, of the proper functioning of the internal market, the need to ensure fair competition and the community environment, and, where appropriate, transport policies.

3. For authorisations granted under the first sub-paragraph of paragraph 1, the following procedure shall be applicable.

The measure may be authorised for a period of three years, with the possibility of renewal, using the procedure set out in Article 24 of Directive 92/12/EEC relating to the holding, movement and monitoring of products subject to excise duty.

If the Commission considers that the exemptions or reductions provided for in paragraph 1 are no longer sustainable, particularly in terms of fair competition or proper functioning of the internal market, or Community policy in the area of protection of the environment, it shall submit appropriate draft measures to the Committee on Excise Duties. Decision on these draft measures shall be taken according to the procedure set out in Article 24 of Directive 92/12/EEC.

In any event, within three years of the entry into force of this Directive and every subsequent three years, the situation with regard to the exemptions or reductions authorised in accordance with paragraph 1 shall be reviewed on the basis of a report by the Commission. It shall be determined, using the procedure set out in Article 24 of Directive 92/12/ECC, whether any or all of them shall be abolished, modified or extended.

4. For authorisations granted under the second sub-paragraph of paragraph 1, the following procedure shall be applicable.

The measure may be authorised using the procedure set out in Article 24 of Directive 92/12/EEC relating to the holding, movement and monitoring of products subject to excise duty.

The Commission shall monitor the impact of decisions taken under the provisions of the second sub-paragraph of paragraph 1 and present a report on the implementation of such measures every three years. The procedure of Article 24 of Directive 92/12/EEC applies for proposals of the Commission to abolish or modify existing authorisations.

5. Member States shall be free to give effect to the exemptions or reductions in the level of taxation mentioned in this Article by refunding all or part of the amount of taxation paid.

IV. Holding and movement of products

Article 17

1. Only the following energy products shall be subject to the provisions of Titles II to IV of Directive 92/12/EEC:

- (a) products falling within CN codes 1507 to 1518 when intended for use or offered for sale as motor fuel;
- (b) products falling within CN code 2207 20 00 when intended for use or offered for sale as motor fuel;
- (c) products falling within CN codes 2707 10, 2707 20, 2707 30 and 2707 50;
- (d) products falling within CN codes 2710 00 11 to 2710 00 78. However, for products falling within CN codes 2710 00 21, 2710 00 25 and 2710 00 59, the control and movement provisions shall only apply to bulk commercial movements;

- (e) products falling within CN codes 2711 (except 2711 11 00, 2711 21 00 and 2711 29 00);
- (f) products falling within CN code 2901 10;
- (g) products falling within CN codes 2902 20, 2902 30, 2902 41 00, 2902 42 00, 2902 43 00 and 2902 44;
- (h) products falling within CN code 2905 11 00 when intended for use or offered for sale as motor fuel

2. If a Member State finds that energy products other than those referred to in paragraph 1 are intended for use, offered for sale or used as heating fuel or motor fuel or are otherwise giving rise to evasion, avoidance or abuse, it shall advise the Commission forthwith. The Commission shall transmit the communication to the other Member States within one month of receipt. A decision as to whether the products in question should be made subject to the control and movement provisions of Directive 92/12/EEC shall then be taken in accordance with the procedure laid down in Article 24 of Directive 92/12/EEC.

3. Member States may, under bilateral arrangements, dispense with some or all of the control measures set out in Directive 92/12/EEC in respect of some or all of the above products, in so far as they are not covered by Article 6 of this Directive. Such arrangements shall not affect Member States which are not party to them. All such bilateral arrangements shall be notified to the Commission, which shall inform the other Member States.

V. Chargeable event and chargeability

Article 18

1. In addition to the general provisions defining the chargeable event and the provisions for payment set out in Directive 92/12/EEC, the amount of taxation on energy products shall also become due on the occurrence of one of the chargeable events mentioned in Article 2 (3) of this Directive.

2. For the purposes of this Directive, the word "production" in Article 5(1) of Directive 92/12/EEC shall be deemed to include "extraction", when appropriate.

3. The consumption of energy products within the curtilage of an establishment producing energy products falling within CN codes 2707, 2709 to 2715, 2901, 2902 38 11 and 3817 shall not be considered a chargeable event giving rise to taxation as long as the consumption is for the purpose of such production.

4. Member States may also provide that taxation on energy products shall become due when it is established that a final use condition laid down in national rules for the purpose of a reduced level of taxation or exemption is not or is no longer fulfilled.

5. For the purpose of applying Article 6 of Directive 92/12/EEC and in relation to electricity, Member States may treat any step in the electricity distribution process as release for consumption.

Article 19

On a change in one or more rates of taxation, stocks of energy products already released for consumption may be subject to an increase in or a reduction of the taxation.

Article 20

Member States may refund the amounts of taxation already paid on contaminated or accidentally mixed energy products sent back to a tax warehouse for recycling.

Article 21

1. Energy products released for consumption in a Member State, contained in the standard tanks of commercial motor vehicles and intended to be used as fuel by those same vehicles and fuel to be used in the systems equipping special containers transported by those same vehicles shall not be subject to taxation in any other Member State.

2. For the purposes of this Article, "standard tanks" shall mean:

- Fixed fuel tanks, directly connected to the engine and/or auxiliary equipment which comply with the technical requirements (in so far as they relate to fuel tanks) of ECE Regulation 34 as amended or of Directive 70/221/EEC. The total capacity of the fixed tanks shall not exceed 1500 litres per transport unit and the capacity of tanks fitted to a trailer shall not exceed 500 litres. Auxiliary tanks on tractor units shall be deemed to be directly connected even if the fuel has to pass through the normal running tank. Auxiliary tanks on trailers may only supply equipment on trailers. Fuel may also be carried in portable fuel containers but fuel carried in such containers is limited to a maximum of 60 litres per vehicle.

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

VL Final provisions

Article 22

1. Member States shall inform the Commission of the levels of taxation which they apply to the products listed in Article 2 of this Directive on the first of January each year and following each change in national law. In particular, Member States shall inform the Commission of the measures they have taken and the conditions they have applied in their efforts to ensure tax neutrality as defined in Article 1 (2).

2. Where the levels of taxation applied by the Member States are expressed in units of measure other than those specified for each product in Articles 6 to 9, Member States shall also notify the corresponding levels of taxation following conversion into these units.

Article 23

1. Member States shall inform the Commission of measures taken under Articles 5, 7(2)(e), 13(2), 14 and 15 of this Directive.

2. Measures such as tax exemptions, tax reductions, tax differentiation and refunds of tax foreseen under this Directive might constitute state aid and in those cases have to be notified to the Commission under Article 93(3) of the Treaty.

Information provided to the Commission on the basis of this Directive does not free Member States from the notification obligation under Article 93(3) of the Treaty.

3. The obligation to inform the Commission under paragraph 1 of this Article of measures taken under Article 5 of this Directive does not free Member States from any notification obligations arising under the provisions of Directive 83/189/EEC of 28 March 1983.

Article 24

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than 31 December 1997. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by the Member States.

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

Article 25

Directives 92/81/EEC and 92/82/EEC are hereby repealed.

Article 26

This Directive is addressed to the Member States.

ANNEX I. MINIMUM LEVELS OF TAXATION ON 1/01/1998, 1/01/2000 AND 1/01/2002

I. MINIMUM LEVELS OF TAXATION APPLICABLE TO MOTOR FUEL

	Minimum levels of taxation on 1/01/1998	Minimum levels of taxation on 1/01/2000	Target minimum levels of taxation for 1/01/2002
Petrol (ECU per 1000 l)	417	450	500
Gas oil (ECU per 1000 l)	310	343	393
Kerosene (ECU per 1000 l)	310	343	393
LPG (ECU per 1000 kg)	141	174	224
Natural gas (ECU per gigajoule)	2,9	3,5	4,5

II. MINIMUM LEVELS OF TAXATION APPLICABLE TO MOTOR FUELS USED FOR THE PURPOSES SET OUT IN ARTICLE 7(2)

	Minimum levels of taxation on 1/01/1998	Minimum levels of taxation on 1/01/2000	Target minimum levels of taxation for 1/01/2002
Gas oil (ECU per 1000 l)	32	37	41
Kerosene (ECU per 1000 l)	30	35	39
LPG (ECU per 1000 kg)	41	48	53
Natural gas (ECU per gigajoule)	0,3	0,6	1,1

III. MINIMUM LEVELS OF TAXATION APPLICABLE TO HEATING FUELS AND ELECTRICITY

	Minimum levels of taxation on 1/01/1998	Minimum levels of taxation on 1/01/2000	Target-minimum levels of taxation for 1/01/2002
Heating gas oil (ECU per 1000 l)	21	23	26
Heavy fuel oil CN code 27100074 (ECU per 1000 kg)	18	23	28
Other heavy fuel oil CN code 2710	22	28	34
Kerosene (ECU per 1000 l)	7	16	25
LPG (ECU per 1000 kg)	10	22	34
Natural gas (ECU per gigajoule)	0,2	0,45	0,7
Solid energy products (ECU per gigajoule)	0.2	0.45	0.7
Electricity (ECU per MWh)	1	2	3

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