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THE EUROPEAN UNION**

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"I/A" ITEM NOTE

from: General Secretariat
to: Coreper/Council
Subject: Energy Taxation Directive
- State of play

1. A Note reflecting the state of play and setting out proposals for the future work regarding the Energy Taxation Directive has been prepared by the Presidency. It was agreed in the Fiscal Counsellors/Attachés meeting following discussions on 11 June 2013.

2. The Permanent Representatives Committee is therefore invited to:
 - forward the draft Note to the Council (ECOFIN) on 21 June 2013;
 - suggest endorsement of the Note as set out in the Annex by the Council.

Presidency Note

This note explains the background and the state of play of the discussions on the Commission proposal for a COUNCIL DIRECTIVE amending the Energy Taxation Directive to the Council (ECOFIN) of 21 June 2013.

A. Background and state of play of the discussions

In April 2011 the Commission presented to the Council a proposal for a Council Directive amending Directive 2003/96/EC restructuring the Community framework for the taxation of energy products and electricity ("the Energy Taxation Directive" or "the ETD"). The proposal seeks to bring the ETD more closely into line with the EU's energy and climate change objectives as requested by the March 2008 European Council. In June and October 2012, the European Council asked that work and discussions on the Commission proposal on energy taxation should be carried forward.

1. The proposal has been discussed in the Council's Working Party on Tax Questions on several occasions under the Hungarian, Polish, Danish, Cyprus and Irish Presidencies. The Irish Presidency has chaired two meetings. It started discussions on 23 January 2013 on a Presidency paper setting out the logic behind the Irish Presidency approach and posing questions to Member States. It also proposed minimum rates based on the logic presented. Taking into account the State of Play report endorsed by ECOFIN on 4 December 2012 the Presidency focussed specifically on minimum rates and on the exemptions in Articles 15 and 17. In presenting the proposed minimum rates in tables the Presidency chose, for ease of reference, to split motor fuels into two groups. Group 1 included petrol, auto-diesel, kerosene and non-sustainable biofuels and bioliquids. Group 2 included fuels coming from a history of comparatively lower minimum levels of taxation expressed in euro/GJ value and consisted of LPG, natural gas and sustainable biofuels. The Presidency proposed increasing the rates on a step by step basis up to 2027 (revised subsequently to 2024).

2. The Presidency's approach and compromise proposals have, inter alia, been based on the following principles:
- the single minimum rates are established on the basis of a two reference components, an energy-related component and a CO₂-related component;
 - the right of Member States to express their national tax levels as one single rate of tax or as separate components.

This approach for the structure of the taxation has been accepted in principle by most Member States.¹

3. The Presidency, following on from the Cyprus Presidency approach, proposed new minimum tax levels, based on the total minimum levels of taxation following from the Commission proposal but with a CO₂ related component of €12 and further adjusted the CO₂ related component for heating fuels for business use. The Presidency proposed, for discussion, the rate of 9 €/tCO₂ as the rate of the CO₂-related component, to calculate the minimum level of taxation for such fuels in response to concerns raised by several Member States regarding increased costs for business. In the case of motor fuels, the Presidency approach was to apply actual and projected inflation rates to such fuels (from 2010 onwards in the case of group 1 fuels and from 2004 onwards in the case of group 2 fuels).

More development on minimum rates is required to address remaining concerns of some Member States such as those concerning, in particular, the rates for LPG, natural gas, coal and kerosene as heating fuels for business use as well as the use of certain products as motor fuels.

¹ Poland and Romania recalled their concerns on the structure of the taxation.

4. The Presidency has proposed lower overall minimum levels of taxation for biofuels and bioliquids (putting the CO₂-component at 0 €/tCO₂ and the energy related component at a substantially lower level than that of the corresponding fossil fuel), 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.

As regards biofuels and bioliquids that do not comply with the sustainability criteria mentioned above, the Presidency proposes EU minimum rates expressed in €/GJ equal to the minimum level of taxation of the equivalent fossil fuel, thus allowing Member States to take into account the generally lower energy content per litre of biofuels and bioliquids.

Even though there is support from some Member States to this approach, other Member States disagree and they would like sustainable and unsustainable biofuels and bioliquids to be taxed at the rate for the equivalent fossil fuel, only allowing exemptions and reductions in accordance with Article 16.

5. With regard to Article 15 the Presidency has presented two compromise texts. The second of these has taken on board the concerns raised by several Member States at the meeting on 12th March, particularly in regard to combined heat and power. The Presidency has also included a paragraph dealing with district heating for households at the request of one Member State. In the case of Article 15.3, the Presidency has proposed a phasing out of the current exemption permissible for energy products used in agricultural, horticultural and piscicultural works and in forestry. The Presidency proposes that by 2021, Member States will be required to respect a minimum tax level reflecting the CO₂ component of the minimum tax level for the relevant fuel.¹

¹ Poland recalled its concerns on the structure of the taxation.

Some Member States remain opposed to the phasing out of the current exemption under Article 15.3 while a number of Member States support its removal.

6. With regard to Article 17, the Presidency has not proposed any compromise text as this is closely aligned to attaining agreement on minimum tax levels.

B. Future Work

Against this background the Presidency proposes that the Council:

- (1) takes note of the Presidency's approach as presented in the most recent compromise proposal in doc. 8940/1/13 REV 1 FISC 76 ENER 145 ENV 335;
- (2) notes that, in order to achieve further progress towards a final compromise, further work is needed, in particular in the following areas:
 - Levels of the minimum rates of taxation of the energy products and electricity including in particular difficulties expressed by some Member States regarding LPG and natural gas used as propellants and LPG, Natural Gas, Coal and Kerosene used as heating fuels;
 - Continuing discussion on tax reliefs under Article 15, including reliefs below the minimum levels;
 - Tax reliefs under Article 17, including reliefs below the minimum levels;
 - Tax treatment of commercial gasoil;
 - Transitional periods;
 - Taxation of installations falling within the EU Emission Trading Scheme (ETS);
 - Tax treatment of biofuels and bioliquids;
 - Articles 14a and 18;

- (3) notes the link with other relevant areas of EU legislation;
 - (4) invites future Presidencies to continue work, having as a starting point the compromise proposal in doc. 8940/1/13 REV 1 FISC 76 ENER 145 ENV 335.
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