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From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
Subject:	Proposal for a Council Directive amending Directive 2003/96/EC restructuring the Community framework for the taxation of energy products and electricity - Progress report

1. In April 2011, the Commission submitted its Proposal for a Council Directive amending Directive 2003/96/EC restructuring the Community framework for the taxation of energy products and electricity.

2. The proposal aims at restructuring the way energy products are taxed, namely by taking into account of both their CO2 emissions and energy content. The objective is to promote energy efficiency and consumption of more environmentally friendly products and to avoid distortions of competition in the Single Market.

3. Continuing the work done by previous Presidencies, the Hellenic Presidency prepared compromise proposals that were examined at five meetings of the Working Party on Tax Questions (WPTQ-Energy taxation). In addition, the High Level Working Party on Taxation (HLWP) also scrutinised the file at one of its meetings.

4. Taking stock of the negotiations that took place during the first half of 2014, the Presidency presented a Progress report which was discussed and approved at technical level by the WPTQ-Energy Taxation on 2 June.

5. Against this background, the Permanent Representatives Committee is invited to:

   - recommend to the Council (ECOFIN - 20 June 2014) to take note of the Presidency progress report as set out in the Annex to this note.

   - recommend to the Council to endorse the conclusions as set out in the second part of the Progress report entitled "II. Future Work".

ANNEX

Presidency Progress Report

I. Background and state of play of the discussions

1. Since its submission in 2011, the proposal[1] 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") has been intensively discussed in the Working Party on Tax Questions (Energy Taxation). The Hellenic Presidency continued this effort aiming to find a compromise on difficult issues such as the minimum rates; the tax treatment of bio-fuels; the tax treatment of installations falling within the EU Emission Trading System (ETS); the tax treatment of the energy intensive businesses and the exemptions and reductions below the minimum levels of taxation.

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. However, some Member States still express their reservation regarding the structure of taxation.

[1] COM(2011) 169 final

3. The Hellenic Presidency presented an initial compromise proposal[2] which was examined by the Working Party on Tax Questions on 23 January 2014. This proposal has, *inter alia*, introduced the following new elements:

- lower overall minimum levels of taxation for LPG, natural gas and the sustainable bio-fuels used as propellants;
- a step by step approach for heating fuels;
- specific minimum rates for installations falling within the EU Emission Trading System(ETS) (new Article 9a);
- specific minimum rates for the energy intensive business and business that enter into environmental agreements (Article 11).

4. Encouraged by the group's response to its approach and endeavouring to take into account the various concerns expressed, the Presidency submitted a second compromise text[3], which was discussed by the Working Party on Tax Questions on 25 February 2014. The Presidency accompanied this text with a note that analysed the possible approach of the Presidency on the minimum rates and the transitional periods and at the same time requested from the Member States to indicate acceptable transitional periods and minimum rates. In the explanatory comments[4] of this compromise text, the Presidency analysed the link between the method of calculation of the minimum levels of taxation and the compatibility of the provisions of the minimum rates with the State Aid rules. According to the Presidency, a clear justifiable logic on the structure of the minimum rates might eliminate the necessity of the notification obligation under the State Aid rules. However, the exact interplay of these provisions with the State Aid rules can only be verified at a later stage due to on-going reforms in this domain.

[2] doc. 18014/13 + COR 1
[3] doc. 6306/14
[4] doc. 6306/14 ADD 1

5. In its third and fourth compromise texts[5], the Presidency tried to maintain, to the extent possible, the logic in the structure of taxation of minimum rates. However, in order to achieve progress and to address the demand of some Member States for lower minimum rates regarding the energy products used as heating fuels, the Presidency suggested to reduce the rate of the CO2 and energy-related components for those fuels. In addition, the Presidency introduced a stepwise approach for motor fuels used as propellants and lowered further the minimum rates of LPG and natural gas. In these compromise texts, the sustainable bio-fuels are taxed based on their energy content (€/GJ) and are separated in two new main categories[6] according to use. The provisions regarding the differentiation between commercial and non-commercial use of gas oil used as propellant and the exemption of energy products used in agriculture have been maintained.

II. 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. 9379/14 FISC 77 ENER 173 ENV 421;

(2) notes that, in order to achieve further progress towards a final compromise, additional work is needed, in particular in the following areas:

- Levels of the minimum rates of taxation of 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, Coke, hard/bituminous coal, lignite and kerosene used as heating fuels;
- Tax treatment of commercial gasoil;

[5] doc. 7852/14 and doc. 9379/14 respectively
[6] Sustainable bio-fuels used in spark-ignition engines and sustainable bio-fuels used in compression-ignition engines.

- Transitional periods;
- Taxation of installations falling within the EU Emission Trading System (ETS);
- Taxation of energy intensive business and business that enter into environmental agreements;
- Tax reliefs under Article 15, including reliefs below the minimum levels;
- Tax treatment of biofuels and bioliquids;
- Regionalisation under Article 18, namely the possibility for local authorities to apply differentiated tax rates;
- Lubricants under the scope of Article 20;
- Remaining technical issues, in particular in Articles 4(4) and 21.

(3) notes there is a relation between the Energy Taxation Directive and other EU legislation that needs to be discussed;

(4) invites future Presidencies to continue the work, having as a starting point the compromise proposal in doc. 9379/14.