

Council Directive 2003/96/EC of 27 October 2003
restructuring the Community framework for the taxation of
energy products and electricity (Text with EEA relevance)

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 93 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 European Economic and Social Committee,

Whereas:

- (1) The scope of Council Directive 92/81/EEC of 19 October 1992 on the harmonisation of the structures of excise duties on mineral oils⁽¹⁾ and of Council Directive 92/82/EEC of 19 October 1992 on the approximation of the rates of excise duties on mineral oils⁽²⁾ is restricted to mineral oils.
- (2) The absence of Community provisions imposing a minimum rate of taxation on electricity and energy products other than mineral oils may adversely affect the proper functioning of the internal market.
- (3) 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 most energy products, including electricity, natural gas and coal.
- (4) Appreciable differences in the national levels of energy taxation applied by Member States could prove detrimental to the proper functioning of the internal market.
- (5) The establishment of appropriate Community minimum levels of taxation may enable existing differences in the national levels of taxation to be reduced.
- (6) In accordance with Article 6 of the Treaty, environmental protection requirements must be integrated into the definition and implementation of other Community policies.
- (7) As a party to the United Nations Framework Convention on Climate Change, the Community has ratified the Kyoto Protocol. The taxation of energy products and, where appropriate, electricity is one of the instruments available for achieving the Kyoto Protocol objectives.

- (8) The Council needs to examine the exemptions and reductions and the minimum levels of taxation periodically, taking into consideration the proper functioning of the internal market, the real value of the minimum levels of taxation, the competitiveness of Community businesses in the international framework and the wider objectives of the Treaty.
- (9) Member States should be given the flexibility necessary to define and implement policies appropriate to their national circumstances.
- (10) Member States wish to introduce or retain different types of taxation on energy products and electricity. To that end, Member States should be permitted to comply with the Community minimum taxation levels by taking into account the total charge levied in respect of all indirect taxes which they have chosen to apply (excluding VAT).
- (11) Fiscal arrangements made in connection with the implementation of this Community framework for the taxation of energy products and electricity are a matter for each Member State to decide. In this regard, Member States might decide not to increase the overall tax burden if they consider that the implementation of such a principle of tax neutrality could contribute to the restructuring and the modernisation of their tax systems by encouraging behaviour conducive to greater protection of the environment and increased labour use.
- (12) Energy prices are key elements of Community energy, transport and environment policies.
- (13) Taxation partly determines the price of energy products and electricity.
- (14) The minimum levels of taxation should reflect the competitive position of the different energy products and electricity. It would be advisable in this connection to base the calculation of these minimum levels as far as possible on the energy content of the products. However, this method should not be applied to motor fuels.
- (15) The possibility of applying differentiated national rates of taxation to the same product should be allowed in certain circumstances or permanent conditions, provided that Community minimum levels of taxation and internal market and competition rules are respected.
- (16) As heat is only subject to very limited intra-Community trade, output taxation of heat should remain outside the scope of this Community framework.
- (17) It is necessary to establish different Community minimum levels of taxation according to the use of the energy products and electricity.
- (18) Energy products used as a motor fuel for certain industrial and commercial purposes and those used as heating fuel are normally taxed at lower levels than those applicable to energy products used as a propellant.
- (19) The taxation of diesel motor fuel used by hauliers, notably those engaging in intra-Community activities, requires a possibility for a specific treatment, including measures to allow for the introduction of a system of road user charges, in order to limit the distortion of competition operators might be confronted with.

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- (20) Member States may need to differentiate between commercial and non-commercial diesel. Member States may use this possibility to reduce the gap between the taxation of non-commercial gas oil used as propellant and petrol.
- (21) Business use and non-business use of energy products and electricity may be treated differently for tax purposes.
- (22) Energy products should essentially be subject to a Community framework when used as heating fuel or motor fuel. To that extent, it is in the nature and the logic of the tax system to exclude from the scope of the framework dual uses and non-fuel uses of energy products as well as mineralogical processes. Electricity used in similar ways should be treated on an equal footing.
- (23) Existing international obligations and the maintaining of the competitive position of Community companies make it advisable to continue the exemptions of energy products supplied for air navigation and sea navigation, other than for private pleasure purposes, while it should be possible for Member States to limit these exemptions.
- (24) Member States should be permitted to apply certain other exemptions or reduced levels of taxation, where that will not be detrimental to the proper functioning of the internal market and will not result in distortions of competition.
- (25) In particular, combined heat and power generation and, in order to promote the use of alternative energy sources, renewable forms of energy may qualify for preferential treatment.
- (26) It is desirable to establish a Community framework to allow Member States to exempt or reduce excise duties so as to promote biofuels, thereby contributing to the better functioning of the internal market and affording Member States and economic operators a sufficient degree of legal certainty. Distortions of competition should be limited and the incentive of a reduction in the basic costs for producers and distributors of biofuels should be maintained through, *inter alia*, the adjustments by Member States taking into account changes in raw material prices.
- (27) This Directive shall be without prejudice to the application of the relevant provisions of 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⁽³⁾, and Council Directive 92/83/EEC of 19 October 1992 on the harmonization of the structures of excise duties on alcohol and alcoholic beverages⁽⁴⁾, when the product intended for use, offered for sale or used as motor fuel or fuel additive is ethyl alcohol as defined in Directive 92/83/EEC.
- (28) Certain exemptions or reductions in the tax level may prove necessary; notably because of the lack of a stronger harmonisation at Community level, because of the risks of a loss of international competitiveness or because of social or environmental considerations.
- (29) Businesses entering into agreements to significantly enhance environmental protection and energy efficiency deserve attention; among these businesses, energy intensive ones merit specific treatment.

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- (30) Transitional periods and arrangements may be required in order to allow Member States to smoothly adapt to the new levels of taxation, thus limiting possible negative side effects.
- (31) It is necessary to provide for a procedure authorising the introduction by Member States, for a set period, of other exemptions or reduced levels of taxation. Such exemptions or reductions should be under regular review.
- (32) Provision should be made for the Member States to notify the Commission of certain national measures. Such notification does not release Member States from the obligation, laid down in Article 88(3) of the Treaty, to notify certain national measures. This Directive does not prejudice the outcome of any future State aid procedure that may be undertaken in accordance with Articles 87 and 88 of the Treaty.
- (33) The scope of Directive 92/12/EEC should, where appropriate, be extended to the products and indirect taxes covered by this Directive.
- (34) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission⁽⁵⁾,

HAS ADOPTED THIS DIRECTIVE:

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- (1) [OJ L 316, 31.10.1992, p. 12](#). Directive as last amended by Directive 94/74/EC ([OJ L 365, 31.12.1994, p. 46](#)).
- (2) [OJ L 316, 31.10.1992, p. 19](#). Directive as last amended by Directive 94/74/EC.
- (3) [OJ L 76, 23.3.1992, p. 1](#). Directive as last amended by Directive 2000/47/EC ([OJ L 193, 29.7.2000, p. 73](#)).
- (4) [OJ L 316, 31.10.1992, p. 21](#).
- (5) [OJ L 184, 17.7.1999, p. 23](#).