



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 28.1.2004
COM(2004) 42 final

2004/0016 (CNS)

Proposal for a

COUNCIL DIRECTIVE

**amending Directive 2003/96/EC as regards the possibility for certain Member States
to apply, in respect of energy products and electricity, temporary exemptions
or reductions in the levels of taxation**

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. INTRODUCTION

Council Directive 2003/96/EC restructuring the Community framework for the taxation of energy products and electricity (hereafter the "Directive") was adopted on 27 October 2003¹. It will enter into force on 1 January 2004².

As for the current Member States, acceding Member States need certain transitional arrangements to cope with the new requirements introduced by the Directive. The Commission, therefore, has to propose a directive, based on Article 93 of the EC Treaty, to amend the Directive.

2. THE FISCAL FRAMEWORK APPLICABLE TO ENERGY PRODUCTS AND ELECTRICITY

Energy products are basically taxed in three ways: (a) excise duties, which are specific duties (proportional to the physical quantity of the product), (b) dedicated taxes and duties and (c) VAT, which is an *ad valorem* tax (proportional to the selling price of the product).

2.1. The mineral oils Directives

In the case of excise duty, the Member States decided in 1992 to establish a Community system for taxing mineral oils. This decision was transposed into two Directives, one on the harmonisation of the structures of excise duties on mineral oils (92/81/EEC),³ and the other on the approximation of the rates of excise duties on mineral oils (92/82/EEC).⁴ The Directives define the various products and structures and lay down a minimum tax rate for each type of mineral oil, depending on whether it is used as a fuel, for industrial or commercial purposes or for heating.

Pursuant to Article 8(4) of Directive 92/81/EEC, the Council, acting unanimously on a proposal from the Commission, may authorize any Member State to introduce further exemptions or reductions for specific policy considerations. More than one hundred of these derogations are in force in the 15 Member States. They were extended in 2001. The great majority expires on 31 December 2006⁵.

The level of excise duties applied by many of the acceding countries is in some cases significantly lower than that in the European Union. While some accession countries already comply with the current minimum excise duty rates set by Directive 92/82/EEC, others are as still in the process of alignment towards the current minimum excise rates and will not comply with the present Community legislation until the date of accession. However, only a very few derogations are granted in respect of such duties in the Treaty of Accession to the European Union 2003⁶:

¹ OJ L 283 of 31.10.2003, p. 51.

² Measures concerning biofuels and individual derogations, granted on the basis of Article 8 paragraph 4 of Directive 92/81/EEC, enter retroactively into force on 1 January 2003.

³ OJ L 316, 31.10.1992, p. 12, as last amended by Directive 94/74/EC (OJ L 365, 31.12.1994, p. 46).

⁴ OJ L 316, 31.10.1992, p. 19, as last amended by Directive 94/74/EC (OJ L 365, 31.12.1994, p. 46).

⁵ Council Decision of 12 March 2001 concerning reduced rates of excise duty and exemptions from such duty on certain mineral oils when used for specific purposes (OJ L 84 of 23.3.2001, p. 23).

⁶ OJ L 236, 23.9.2003, p. 17.

- i) for Cyprus:
 - Without prejudice to a formal decision to be adopted according to the procedure set out in Article 8(4) of Directive 92/81/EEC, Cyprus may apply an exemption from excise duties on mineral oils used for the production of cement until one year after the date of accession.
 - Without prejudice to a formal decision to be adopted according to the procedure set out in Article 8(4) of Directive 92/81/EEC, Cyprus may also apply an exemption from additional excise duties on all types of fuel used for local passenger transport until one year after the date of accession.
- ii) for Poland:
 - Without prejudice either to a formal decision to be adopted according to the procedure set out in Article 8(4) of Directive 92/81/EEC, or to an assessment of this measure under Article 87 of the EC Treaty, Poland may maintain a reduced rate of excise duty on petrol manufactured with anhydrous alcohol, gas oil with a low sulphur content and petrol containing ethyl butyl alcohol ether until one year after the date of accession.

Directives 92/81/EEC and 92/82/EEC will be repealed as from 31 December 2003.

2.2. The energy tax Directive

The energy tax Directive widens the scope of the previous mineral oils directives to nearly all energy products, including coal and gas, and electricity. It also updates the minimum rates for mineral oils which have not been revised since 1992:

Motor fuels			
	Minimum rates in Directive 92/82/EEC	Minimum rates in Directive 2003/96/EC from 1/1/2004	Minimum rates in Directive 2003/96/EC from 1/1/2010
Petrol (€/1000 l.)	337	421	421
Unleaded petrol (€/1000 l.)	287	359	359
Diesel (€/1000 l.)	245	302	330
Kerosene (€/1000 l.)	245	302	330
LPG (€/1000 kg.)	100	125	125
Natural gas	100 (€/1000 kg)	2.6 (€/gigajoule, gross calorific value)	2.6 (€/gigajoule, gross calorific value)

Fuels used for industrial or commercial purposes		
	Minimum rates in Directive 92/82/EEC	Minimum rates in Directive 2003/96/EC from 1/1/2004
Diesel (€/1000 l.)	18	21
Kerosene (€/1000 l.)	18	21
LPG (€/1000 kg.)	36	41
Natural gas	36 (€/1000 kg)	0.3 (€/gigajoule, gross calorific value)

Heating fuels and electricity			
	Minimum rates in Directive 92/82/EEC	Minimum rates in Directive 2003/96/EC from 1/1/2004 (business)	Minimum rates in Directive 2003/96/EC from 1/1/2004 (non-business)
Diesel (€/1000 l.)	18	21	21
Heavy fuel oil (€/1000 kg.)	13	15	15
Kerosene (€/1000 l.)	0	0	0
LPG (€/1000 kg.)	0	0	0
Natural gas (€/gigajoule, gross calorific value)	N/A	0.15	0.3
Coal and coke (€/gigajoule)	N/A	0.15	0.3
Electricity (€/MWh)	N/A	0.5	1.0

The Directive will reduce distortions of competition that currently exist between Member States as a result of divergent rates of tax. Furthermore, it will reduce distortions of competition between mineral oils and the other energy products that have not been subject to Community tax legislation until now. Finally, it will increase the incentive to use energy more efficiently, so as to reduce dependency on imported energy and cut carbon dioxide emissions in the context of the Kyoto Protocol.

2.3. Tax differentials and transitional arrangements

The Directive gives various possibilities to differentiate tax rates, depending on uses or products. The following measures are particularly relevant to the present proposal:

- Member States with difficulties in implementing the new minimum levels of taxation are allowed a transitional period until 1 January 2007, in order to avoid jeopardising price stability, provided that this does not significantly distort competition - see Article 18(2).
- Member States have, in principle, to exempt from taxation energy products and electricity used to produce electricity - see Article 14(1)(a).
- Member States may apply under fiscal control total or partial exemptions or reductions in the level of taxation to natural gas in Member States in which the share of natural gas in final energy consumption was less than 15% in 2000. The total or partial exemptions or reductions may apply for a maximum period of ten years after the entry into force of this Directive or until the national share of natural gas in final energy consumption reaches 25%, whichever is the sooner. However, as soon as the national share of natural gas in final energy consumption reaches 20%, the Member States concerned must apply a strictly positive level of taxation, which must increase on a yearly basis in order to reach at least the minimum rate at the end of the period referred to above - see Article 15(1)(g).
- Member States may apply, under fiscal control, total or partial exemptions or reductions in the level of taxation to electricity, natural gas, coal and solid fuels used by households - see Article 15(1)(h).
- Dual uses⁷ and non-fuel uses of energy products as well as mineralogical processes are excluded from the scope of the Directive. Electricity used in similar ways benefits from similar treatment - see Article 2(4).

In addition to these measures, Member States are allowed to continue to apply, until 31 December 2006 at the latest, the derogations granted on the basis of Article 8(4) of Directive 92/81/EEC, and extended in 2001 - see Article 18(1).

Finally, the Directive includes transitional periods for some Member States during which the Member States in question are required to progressively increase their rates and so reduce the gap with respect to the new minimum levels of taxation - see Article 18(14).

3. TRANSITIONAL ARRANGEMENTS FOR THE ACCEDING MEMBER STATES

At its meeting of 24 October 2003, the Interim Committee of the Council took note of the concerns expressed by the delegations of the acceding States on the Directive. The latter were invited by the Commission to submit as soon as possible and preferably within 15 working days their detailed and reasoned requests for transitional arrangements in order to allow for their timely examination

In the course of November 2003, the acceding Member States submitted their requests to the Commission.

⁷ The use of energy products for chemical reduction and in electrolytic and metallurgical processes must be regarded as dual use.

Taking into account their present level of excise duties, their ongoing economic transition and their relatively low income level, acceding Member States may face significant economic and social difficulties as regards the minimum rates set by the Directive. In particular, the likely price increase could adversely affect their citizens and the economy as a whole and may in particular represent an unbearable burden for SMEs. However, it should be underlined as well that the acceding countries will receive important community transfers (TEN, structural and cohesion funds up to 4% of their GDP) and despite the fact that the national development plans differ significantly in terms of the allocation of support to areas of intervention, reflecting variations in social and economic circumstances and perceived priorities, these transfers aim to compensate their weakness and reinforce their competitiveness by the development of new infrastructures notably in the energy sector. Moreover, the scope for most acceding Member States to internally compensate for these additional burdens, by reducing other taxes, seems rather limited. Therefore the Commission suggests granting – if needed - transitional arrangements.

This is in line with the general position that the EU set out during negotiations with acceding countries: transitional periods should be granted taking account of the interests not only of the Union, but also of Candidate Countries⁸. As concerns in particular the taxation chapter, the Communication from the Commission to the European Council, on a mid-term review of the implementation of the enlargement strategy, read that “*in considering whether transitional measures should be accepted, the Member States should take into account the need to safeguard the functioning of the internal market, as well as the political, economic and social implications for the Candidate Countries*”⁹.

The EU acknowledged the direct and potentially disrupting impact of increase of indirect taxation (excises and VAT) on the standards of living of large sections of the population in candidate countries. As a result, during negotiations an extensive range of transitional periods was granted to all candidate countries, to maintain reduced rates of VAT or excises in areas recognised as particularly socially and politically sensitive, including heating, electricity and gas, cigarettes¹⁰.

As concerns the taxation of energy, it should be recalled that current Member States were also granted transitional periods (as explained above) that often concern the same products for which acceding countries have put forward their requests. Against this background, while taking into account the specific needs of acceding countries, the Commission assessed their requests against the same principles that were applied to the granting of transitional periods to present Member States. According to such principles, the transitional measures should:

- be strictly time limited and, in principle, last no longer than 2012;
- be proportionate to the problem they seek to address;
- include, where relevant, a progressive alignment towards the Community minimum rates applicable.

⁸ EU general position as cited in enlargement strategy paper 2000, p. 26, and communication from Mr. Verheugen (in agreement with the president) to the Commission: “Essential elements on excise duty rates on cigarettes for the draft common positions concerning chapter taxation” of 23 October 2001.

⁹ COM(2001) 553 of 2.10.2001, p. 17.

¹⁰ Accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia (OJ L 236 of 23.9.2003).

Moreover, where no transitional period was granted in the Accession Treaty, the minimum rates set by Directive 92/82/EEC have to be implemented as of 1 May 2004.

The objectives of other Community policies, notably the environmental friendliness of heating fuels, have also been integrated in the analyses.

It is worth recalling that, after the political agreement¹¹ was reached (March 2003), the Commission went to all acceding Member States to give technical information on the Directive. In addition, a meeting dedicated to the difficulties met by Member States in transposing the future Directive was held on 1 July 2003 at which acceding Member States were invited.

3.1. The Czech Republic

According to the Czech authorities letter of 13 November 2003, introducing excise duties on electricity, solid fuels and natural gas would have an adverse impact on consumers. It would bring an unbearable social burden for the Czech citizens. Furthermore, it would affect small and medium enterprises and would make them less competitive in the Internal Market. The higher levels of taxation would also affect the Czech industry, in particular the chemical industry, building industry (burnt bricks, roof covering, etc.), ceramic and porcelain production, traditional Czech glass-blowing and costume jewellery.

The Czech authorities have estimated that the introduction of the minimum rates set by the energy tax Directive would lead to price increases for final consumers of around 1% for electricity, in the range of 10% for solid fuels¹², and up to 5% for natural gas.

Therefore, the Czech Republic requests transitional arrangements regarding i) electricity and solid fuels, and ii) natural gas used for heating purpose.

The Czech authorities point out that it would be important to adjust national duty rates applicable to electricity, solid fuels and natural gas used for heating purpose at the same time, in order to avoid distortions of competition on the energy market.

3.1.1. Electricity and solid fuels

Electricity and solid fuels are not subject to tax in the Czech Republic. Due to the implementation of the Directive, a completely new system for the taxation of electricity and solid fuels will have to be introduced and new legislation will have to be drafted and adopted in this area.

Concerning electricity, liberalisation of the electricity market will be finalised by the end of 2005. This would bring about changes in the electricity trading system. It is, therefore, important that the new taxation system on electricity be introduced in line with these changes.

The Czech Republic is a coal producer. If the tax rate is introduced for solid fuels, its competitiveness with petroleum would suffer and a further decrease of coal production would occur. This would have a direct impact on employment in the coal regions.

¹¹ Doc 8084/03 Fisc 59 of 3.4.2003.

¹² For solid fuels, the spread is rather large, between 4% and 16%, depending on the product and use.

In this context, the Czech Republic requests a transitional period until 1 January 2008 to introduce a taxation system for electricity and solid fuels, according to the provisions set out in the Directive.

Assessment

The mere need to introduce appropriate legislation is not a reason for postponing the taxation of electricity and solid fuels by three and a half years. However, the Commission considers that a transitional arrangement could be accepted if it includes a progressive phasing in of the tax, in order to smoothly reach the minimum levels set by the directive.

The Commission concludes that the Czech Republic should be authorised to apply total or partial exemptions or reductions in the level of taxation of electricity and solid fuels until 1 January 2008.

3.1.2. Natural gas

According to the national legislation on excise duties, natural gas used for heating purposes is already a taxable product, but with a zero tax rate. The natural gas facilities are mainly owned by municipalities, which would not be able to cope with a reduced demand, resulting from higher gas prices due to higher taxation. This would result in an increase in municipalities' debts, with a serious adverse impact on public budgets. A related negative consequence would be a rise in the use of heating fuels, which are less environmentally friendly than natural gas.

Therefore, the Czech Republic requests an exemption in the level of taxation of natural gas used for heating purpose until 1 January 2008.

Assessment

The Commission is of the view that the request is proportionate.

The Commission concludes that the Czech Republic should be authorised to apply total or partial exemptions or reductions in the level of taxation of natural gas used for district heating until 1 January 2008.

3.2. Estonia

The Estonian authorities, in their letter of 14 November 2003, requested transitional periods regarding: i) motor fuels, ii) oil shale and shale oil, iii) natural gas), and iv) electricity.

3.2.1. Motor fuels

Estonia is gradually increasing the rates of excise duty applicable to motor fuels, to achieve the requirements of Directive 92/82/EEC by accession. However, the present rates remain well below the minimum rates set by the above-mentioned Directive. If the minimum levels set in Directive 2003/96/EC were to be applied, the excise duty rate of unleaded petrol and gas oil would rise by 60% and 85% respectively.

To avoid price increases and consequent economic drawbacks, Estonia requests a transitional period for applying minimum rates to unleaded petrol, diesel and LPG. In its letter of 14 November, Estonia proposes a road map for gradually increasing its tax rates and to meet the minimum rates by 1 January 2010.

Assessment

For LPG used as motor fuel, Article 15(1)(i) of the energy tax Directive states that Member States may apply, under fiscal control, total or partial exemptions in the level of taxation to natural gas and LPG used as propellants. Therefore, no transitional arrangement is necessary.

The Commission is of the view that the remaining part of the request is proportionate. The Commission concludes that Estonia should be authorised to apply a transitional period until 1 January 2010 to adjust its national level of taxation on gas oil used as propellant to the new minimum level of EUR 330 per 1000 l.

Estonia should also be authorised to apply a transitional period until 1 January 2010 to adjust its national level of taxation on unleaded petrol used as propellant to the new minimum level of EUR 359 per 1000 l.

3.2.2. Oil shale and shale oil

Currently oil shale and shale oil used for heating purposes are not subject to excise duties in Estonia.

Oil shale is the most important domestic source of primary energy, constituting 60% of the overall primary energy balance of Estonia. Oil shale has a critical role in guaranteeing Estonia's energy supply independence. It is produced for two purposes – 80% for production of electricity and heat, 20% as shale oil. The production of oil shale and its consumption is very concentrated from a geographical point of view.

Taxing shale oil for heating purposes upon accession to the EU would lead to serious problems due to the price increase and would endanger the whole industry sector. The decrease of the production of oil shale and shale oil for heating purposes would also result in increased unemployment, mainly in the North-East of Estonia, where the level of unemployment is about 17% (in 2003).

More than half of the Estonian heating plants produce thermal energy from shale oil. The introduction of excise duty would cause a rise in the prices of heating services of about 14%.

In their letter of 14 November, Estonia proposes a road map for the increases in tax rates, to meet the minimum rates in 2015. Full exemption would apply until the end of 2008.

Assessment

Oil shale is a bituminous rock that releases hydrocarbons on distillation. It is classified under CN code 2714. Therefore, it comes within the scope of the Directive (see Article 2(1)(b)).

The Commission recalls that oil shale used to produce electricity should in principle be tax exempt, pursuant to Article 14(1)(a) of the Directive. Moreover, oil shale used to produce shale oil most likely comes within the scope of Article 21(3). In principle, such use is not to be considered as a chargeable event giving rise to taxation. As a consequence, a very significant part of oil shale use will not be taxed in Estonia.

The Commission takes note of the Joint Declaration by the present Member States, in the Treaty of Accession to the European Union 2003, regarding Estonia, "on oil shale, the internal electricity market and Directive 96/92/EC of the European Parliament and of the Council of 19 December 1996 concerning common rules for the internal market in electricity (Electricity

Directive)". Most notably it states that "the Union recognises in this respect the specific situation related to the restructuring of the oil shale sector which will require particular efforts until the end of 2012, and the need for gradual opening of the Estonian electricity market for non-household customers until that date. Based on this assessment, with full consideration to the unique character of oil shale and social and economic considerations related to the extraction, production and consumption of oil shale in Estonia, and taking into account the objectives of the Community regarding the electricity market, the Commission shall report to the Council with appropriate recommendations."

Due to these exceptional circumstances, the Commission considers that Estonia should be authorised to apply a total exemption from taxation of oil shale until 1 January 2009, and thereafter a reduction in the level of taxation of oil shale until 1 January 2013. However, the effective tax rate applied to oil shale cannot be less than 50% of the relevant Community minimum rate as from 1 January 2011. The above mentioned report to the Council may include appropriate tax measures in favour of oil shale, as of 1 January 2010.

Shale oil is a mineral oil within the meaning of Directive 92/81/EEC. For taxation purposes, it is equivalent to heavy fuel oil. No transitional period was requested during the enlargement negotiations. Therefore, the Commission considers that the minimum rates set by Directive 92/82/EEC should in principle be implemented at the time of accession. However, on a very exceptional basis, the Commission can accept that Estonia was not fully aware of the necessity to tax shale oil according to the mineral oils Directives.

To avoid social difficulties, the Commission is of the view that a tax exemption could be granted in favour of households. Estonia should therefore be authorised to apply a transitional period until 1 January 2010 to adjust its national level of taxation on shale oil used for district heating purposes to the minimum level of taxation. However, the effective tax rate applied to shale oil used for district heating purposes cannot be less than 50% of the relevant Community minimum rate as from 1 January 2007.

For companies, the Commission notes that heating purposes often represents a significant part of the total energy consumption. The energy tax Directive has taken such elements into account by providing for certain specific arrangements, in particular in Article 17. The Commission considers that it is not appropriate to grant a further arrangement for exempting shale oil used by companies, beyond the existing framework.

3.2.3. Natural gas

According to the statistics provided by the Estonian authorities in their letter of 14 November 2003, the consumption of natural gas in the years 2000 and 2001 constituted 13% of aggregated consumption of primary energy in Estonia. Estonia is willing to apply Article 15(1)(g) of the Directive, with a view to reaching the minimum rates set by the Directive in 2009.

Assessment

Article 15(1) of the energy tax Directive contains a list of possible exemptions or reductions in the level of taxation that Member States may apply under fiscal control. A Member State does not need to make an *ad hoc* request to the Commission to implement such a measure. No specific transitional arrangement is regarded as necessary by the Commission, as long as the conditions set in Article 15(1) are respected.

3.2.4. Electricity

No excise duty is applied on electricity today. However, Estonia has introduced a CO₂ emission charge on energy production (0.76 euros per MWh on average in year 2002, 1.145 euros per MWh from 2005). As a consequence, the CO₂ emission charge on energy production is already 25% higher than the minimum tax level on electricity stipulated in the Directive.

The implementation of excise duty upon accession to the EU would increase the price of electricity in Estonia. Taking into account the average income of Estonian consumers, this would have serious consequences. Therefore, Estonia is seeking a transitional period for gradual alignment of its electricity taxation rates until the year 2009.

Assessment

The Estonian emission charge is similar to an input tax, introduced for an environmental policy reason. According to Article 14(1) of the Directive, Estonia may maintain such a tax, without having to respect the minimum levels of taxation laid down in the Directive. However, the input tax cannot be taken into account for the purpose of satisfying the minimum level of taxation on electricity laid down in Article 10 of the Directive.

A comparable case is addressed in the Directive, in Article 18(8). Therefore, the Commission concludes that Estonia should be authorised to apply a transitional period until 1 January 2010 to convert its current input electricity taxation system into an output taxation system.

This change in the tax structure can, in principle, be managed in a revenue neutral way, so that there is no price increase for consumers.

3.3. Cyprus

Cyprus has not required any transitional arrangements, additional to those granted in the Accession Treaty.

3.4. Latvia

According to the Latvian authorities, in their note dated 12 November 2003, transposition of the excise tax rates according to the directive would lead to an increase of excise tax for energy products from 5% to 97% as of 2004. It would double the excise tax for gas oil. Thus, the increase of the minimum effective level of indirect taxation of energy products would result in an immediate negative impact through rapid growth of prices for motor fuels and energy for heating purposes.

According to the Latvian authorities, introduction of all the requirements of the Directive as of 1 January 2004 would increase the inflation rate by at least 1 percentage point which would impact on the country's macroeconomic outlook. The expected inflation rate for the year 2004 in Latvia is 3% but taking into account the afore-mentioned, the inflation rate would increase to more than 4%. In such a situation, Latvia risks contravening one of the criteria set out by the Maastricht Treaty.

Last but not the least is that the necessary arrangements to adjust the tax administration to the restructured Community framework for the taxation and possible introduction of new taxes means that a proper tax administration as of 2004 seems hardly feasible, both from the methodological, practical and financial point of view.

As a consequence, Latvia requests several transitional periods: i) for motor fuels, ii) for energy products and electricity used in public passenger transport, iii) for heavy fuel oil, iv) for natural gas, and v) for electricity, coal and coke.

3.4.1. Motor fuels

Development of transportation, which is a key branch of the Latvian economy, would severely suffer from an overnight increase in the tax for motor fuels. Costs of carriage of passengers by rail would increase by 6% and for carriage of goods by 5%. Costs in other kinds of passenger transport would increase by between 15 – 20%.

The purchasing power of private users of motor fuel is such that they would not be able to cope with the price increase and would not be able to buy fuel at the new price. Such a situation could lead to a sharp increase in tax fraud (smuggling) and a decrease in state budget revenues.

Latvia requests a transitional period until 31 December 2010 to adjust the excise rate for gas oil, kerosene and fuel oil used as propellant to the minimum level of 302 euros, and until 31 December 2012 to reach 330 euros. For unleaded petrol, they request a transitional period to 31 December 2010 to reach the minimum rate of 359 euros. For LPG and leaded petrol, Latvia requests a transitional period to 31 December 2004.

Assessment

According to Article 15(1)(i) of the Directive, Member States may apply, under fiscal control, total or partial exemptions or reductions in the level of taxation to natural gas and LPG used as propellant. No specific arrangement is therefore required.

According to Article 18(2) of the Directive, Member States with difficulties in implementing the new minimum levels of taxation are allowed a transitional period until 1 January 2007, in order to avoid jeopardising price stability, provided that this does not significantly distort competition. The Commission acknowledges that the two conditions set by this article are met in the case of leaded petrol taxation in Latvia. Therefore, there is no need to grant a specific transitional arrangement in that case.

The lengthiest transitional periods granted in the Directive regarding gas oil and unleaded petrol are respectively 1 January 2012 and 1 January 2010. Due to the exceptional circumstances prevailing in Latvia, in particular the low present duty rates on motor fuels, the Commission acknowledges that one additional year would be necessary for Latvia to reach the minimum levels set by the Directive. An intermediate step increase in the national tax rates should then be planned.

The Commission concludes that Latvia should be authorised to apply a transitional period until 1 January 2011 to adjust its national level of taxation on gas oil and kerosene used as propellant to the new minimum level of EUR 302 per 1000 l and until 1 January 2013 to reach EUR 330. However, the effective tax rate applied to gas oil and kerosene cannot be less than EUR 274 per 1000 l as from 1 January 2008.

Latvia should also be authorised to apply a transitional period until 1 January 2011 to adjust its national level of taxation on unleaded petrol used as propellant to the new minimum level of EUR 359 per 1000 l. However, the effective tax rate applied to unleaded petrol cannot be less than EUR 323 per 1000 l as from 1 January 2008.

3.4.2. Derogation for energy products and electricity used in public passenger transport

Latvia asks for a derogation in favour of energy products and electricity used in public passenger transport.

Assessment

According to Article 15(1)(e) of the Directive, Member States may apply under fiscal control total or partial exemptions or reductions in the level of taxation to energy products and electricity used for the carriage of goods and passengers by rail, metro, tram and trolley bus.

In addition to the possibility given to Member States, the Commission considers that only local public passenger transport vehicles could enjoy preferential tax treatment. This view is reflected in Annex II to the Directive, which includes several derogations in favour of such vehicles. These derogations are granted until 31 December 2006 at the latest.

The Commission concludes that Latvia should be authorised until 31 December 2006 to apply a reduced rate of taxation or an exemption from taxation in favour of energy products and electricity used in local public passenger transport vehicles.

3.4.3. Heavy fuel oil

First, Latvia requests a transitional period until 31 December 2004 to introduce the new minimum level of taxation applicable to heavy fuel oil.

Secondly, the Latvian authorities note that currently excise tax is refunded to enterprises that use heavy fuel oil for producing heat and hot water. In several cities, heavy fuel oil would be the only fuel used for central heating as other fuels are not available due to lack of infrastructure. The central heating system would be mainly used by blocks of flats, where low-income families live. Cost of heating would represent a great part of their expenses. A sharp increase in heating prices could lead to social tension in these regions. As a consequence, Latvia wishes to be granted a tax exemption for heavy fuel oil used by enterprises in the production of heat and hot water.

Assessment

Regarding the transitional period until 31 December 2004 to introduce the new minimum level of taxation applicable to heavy fuel oil, Member States with difficulties in implementing the new minimum levels of taxation are allowed a transitional period until 1 January 2007, in order to avoid jeopardising price stability, provided that this does not significantly distort competition - see Article 18(2) of the Directive. The Commission acknowledges that the two conditions set by this article are met in the case of the first Latvian request.

To conclude, no specific transitional arrangement is necessary in that case.

Regarding the tax exemption request for heavy fuel oil used by enterprises in the production of heat and hot water, the Commission considers that two cases have to be addressed. For households, a tax exemption could be granted, in order to avoid a sharp price increase. Latvia should therefore be authorised to apply a transitional period until 1 January 2010 to adjust its national level of taxation on heavy fuel oil used for district heating purposes to the minimum level of taxation. However, the effective tax rate applied to heavy fuel oil used for district heating purposes cannot be less than 50% of the Community minimum rate as from 1 January 2007.

For companies, the Commission notes that heat and hot water production represents often a significant part of the total energy consumption. The Directive has taken such elements into account by providing for certain specific arrangements, in particular in Article 17. The Commission considers that it is not appropriate to grant a further arrangement for exempting heavy fuel oil used by economic operators, beyond the existing framework.

3.4.4. Natural gas

Latvia requests i) a postponement of the introduction of the new tax for natural gas until 31 December 2006, ii) a possibility to apply total or partial exemptions or reductions in the level of taxation to natural gas until 31 December 2009 and iii) a derogation for a tax exemption for natural gas used as heating fuel.

Assessment

The request for an unlimited derogation cannot be accepted as a matter of principle. In Latvia, the share of natural gas in final energy consumption was 11% in 2000. Therefore, Latvia has the possibility to benefit from a tax exemption on natural gas as defined by Article 15(1)(g). The Commission considers that the long-term possibility of applying a tax exemption to natural gas, given by this Article, covers the needs of Latvia. No specific transitional arrangement is proposed by the Commission.

3.4.5. Electricity, coal and coke

Electricity, coal and coke are not currently subject to any excise duty in Latvia. Introduction of the minimum taxation level could lead to an increase in the price of electricity by up to 5% and in the price of coal and coke by 12%. In addition, the Public Utilities Commission of Latvia has already approved a price increase of electricity from 1 January 2004. The price of electricity used by households would increase by 15% and the inflation rate by 0.45 of a percentage point.

Latvia requests i) a postponement of the introduction of the new tax for electricity, coal and coke until 31 December 2006, and ii) a possibility to apply total or partial exemptions or reductions in the level of taxation to electricity, coal and coke until 31 December 2009.

Assessment

The Commission is of the view that the request is proportionate for electricity. However, for solid fuels, the Commission considers that the transitional arrangement should end in 2008 at the latest. Progressive phasing in of taxation has to be included, in order to smoothly reach the minimum levels set by the directive.

The Commission concludes that Latvia should be authorised to apply a transitional period until 1 January 2010 to adjust its national level of taxation on electricity to the relevant minimum levels of taxation. However, the effective tax rates applied to electricity cannot be less than 50% of the relevant Community minimum rates as from 1 January 2007.

The Commission concludes that Latvia should be authorised to apply a transitional period until 1 January 2009 to adjust its national level of taxation on coal and coke to the relevant minimum levels of taxation. However, the effective tax rates applied to coal and coke cannot be less than 50% of the relevant Community minimum rates as from 1 January 2007.

3.5. Lithuania

According to the Lithuanian authorities, in their letter dated 7 November 2003, Lithuania would face difficulties in implementing some new minimum rates of taxation for motor fuels and heating fuels, and in introducing taxation for products which were not previously subject to the Community harmonised structure.

As a consequence, Lithuania requests several transitional periods regarding for motor fuels, and electricity, natural gas, coal, coke and lignite, and orimulsion.

3.5.1. Motor fuels

Lithuania will apply the minimum rates applicable to motor fuels set by Directive 92/82/EEC at the date of the Accession. The increase of the tax rates up to the level prescribed in the energy tax Directive would have a significant direct impact on the growth of expenses of households and businesses.

Lithuania considers that the following transitional periods are needed:

- for unleaded petrol: until 1 January 2011;
- for gas oil and kerosene: until 1 January 2011 to reach the minimum rate of EUR 302 and until 1 January 2013 to reach the minimum rate of EUR 330.

Lithuania is contemplating a gradual path to reach the minimum rates.

Assessment

The lengthiest transitional periods granted in the Directive regarding gas oil and unleaded petrol are respectively 1 January 2012 and 1 January 2010. Due to the exceptional circumstances prevailing in Lithuania, in particular the current low duty rates on motor fuels, the Commission acknowledges that one additional year would be necessary for Lithuania to reach the minimum levels set by the Directive. An intermediate step increase of the national tax rates should then be planned.

The Commission concludes that Lithuania should be authorised to apply a transitional period until 1 January 2011 to adjust its national level of taxation on gas oil and kerosene used as propellant to the new minimum level of EUR 302 per 1000 l and until 1 January 2013 to reach EUR 330. However, the effective tax rate applied to gas oil and kerosene cannot be less than EUR 274 per 1000 l as from 1 January 2008.

Lithuania should also be authorised to apply a transitional period until 1 January 2011 to adjust its national level of taxation on unleaded petrol used as propellant to the new minimum level of EUR 359 per 1000 l. However, the effective tax rate applied to unleaded petrol cannot be less than EUR 323 per 1000 l as from 1 January 2008.

The Commission notes that the minimum levels of taxation to be achieved as from 2008 according to this proposal are consistent with the tentative timetables of excise duty increases for motor fuels transmitted by the Lithuanian authorities in their letter of 7 November 2003.

3.5.2. *Electricity, natural gas, coal, coke and lignite, and orimulsion.*

The Directive introduces taxation of electricity, natural gas, coal, coke and lignite as well as of orimulsion. Lithuania seeks transitional periods on the introduction of the taxation of new energy products in order to avoid adverse economic and social implications of the increase of consumption of alternative energy products following the decommissioning of the Ignalina Nuclear Power Plant (between 2005-2009).

Lithuania considers that the following transitional periods are needed:

- for coal, coke and lignite: until 1 January 2007;
- for natural gas and electricity: until 1 January 2010;
- for orimulsion: until 1 January 2016.

Lithuania would like to be allowed to apply full tax exemption to the above-mentioned products until the end of the relevant transition periods, instead of taxing the products at lower rates and gradually increasing them.

In response to an additional question raised by the Commission, the Lithuanian authorities point out that orimulsion is not used solely to produce electricity. In Lithuania, power stations producing electricity also produce, at the same time, heat energy, which is supplied to the heat consumers. The proportion of energy produced in thermo-power stations consists of 60-70% of heat energy and 30-40% of electricity.

Assessment

In the Protocol n° 4 to the treaty of accession to the European Union 2003 on the Ignalina nuclear power plant, Lithuania commits to the closure of Unit 1 of the Ignalina Nuclear Power Plant before 2005 and of Unit 2 of this plant by 31 December 2009 at the latest and to the subsequent decommissioning of these units. The "Ignalina Program" is established to support this action. According to this programme, measures should be adopted to "contribute to the necessary restructuring, environmental upgrading and modernisation of the energy production, transmission and distribution sectors in Lithuania as well as to enhancing the security of energy supply and improving energy efficiency in Lithuania."

In this context, the Commission considers that, until 31 December 2009, tax reductions/exemptions could be granted as complementary measures to help smooth the very important restructuring process of the energy production sector in Lithuania.

The Commission concludes that Lithuania should be authorised to exempt coal, coke and lignite from taxation until 1 January 2007 and natural gas and electricity until 1 January 2010.

Orimulsion is a mixture of bitumen and water. It is classified under CN code 2714. It does not fall within the scope of Directive 92/81/EEC¹³. The Lithuanian authorities explain that 30-40% of orimulsion consumption will be used to produce electricity. Member States have in principle to exempt from taxation energy products and electricity used to produce electricity (see Article 14(1)(a)). Furthermore, according to the Lithuanian authorities, orimulsion is

¹³ Cf. discussions at the Excise Committee in October 1995 (CED 163/12) and January 1996 (CED 176/3).

used to produce heat in "combined heat and power" (CHP) plants. Pursuant to Article 15(1)(c) of the Directive, Member States may apply under fiscal control total or partial exemptions or reductions in the level of taxation to energy products and electricity used for combined heat and power generation. Therefore, the request of Lithuania to apply a full tax exemption to orimulsion used to produce either electricity or heat in CHP plants appears redundant in comparison with measures included in the energy tax Directive.

Moreover, the Commission is of the view that no twelve-year transition period can be deemed proportionate in the context of the Directive. The possibility of a tax exemption could be granted to orimulsion used for purposes other than to produce electricity or heat until 1 January 2010, due to the special circumstances explained above.

The Commission concludes that Lithuania should be authorised to exempt orimulsion used for purposes other than to produce electricity or heat until 1 January 2010.

3.6. Hungary

By letter dated 6 November 2003, Hungary requested two transitional periods: i) for energy products and electricity used for district heating and ii) for coal and coke.

3.6.1. Energy products and electricity used for district heating

According to the Hungarian authorities, due to the structure of the accommodation market in Hungary, a significant part of the households (18%) live in flats and, therefore, have no possibility for individual heating. These households have to purchase heating services from district heating¹⁴ suppliers. According to the Directive, the products used directly by households in the case of individual heating may be exempted. On the other hand, households using district heating have to bear the cost of the energy tax paid on the inputs.

Hungary points out that flats with district heating are situated mainly in large blocks of flats, where low-income families live. The cost of energy would represent a considerable part of their expenses, due to the fact that the cost of district heating would be 40% higher than that of individual heating.

Finally, from an environmental point of view, district heating would be much friendlier than individual forms of heating.

Therefore, Hungary requests the possibility of exempting from energy taxation, electricity (CN code 2716), natural gas (CN code 2711), coal and coke (CN codes 2701, 2702 and 2704) used for district heating purposes, until 31 December 2009.

Assessment

The Commission is of the view that the request is proportionate. However, it should include a progressive phasing in of the tax, in order to smoothly reach the minimum levels set by the directive.

¹⁴ The Hungarian authorities note that the term "district heating" means generating heat supplied to inhabitants, in large number of flats, by a boiler of high capacity located at a distance from the flats and operated by an independent company. It also includes provision of "block heating" when the supply is provided to only one block of flats by an independent company.

The Commission concludes that Hungary should be authorised to apply a transitional period until 1 January 2010 to adjust its national level of taxation on electricity, natural gas, coal and coke used for district heating purposes to the relevant minimum levels of taxation. However, the effective tax rates applied to the energy products concerned, and to electricity, cannot be less than 50% of the relevant Community minimum rates as from 1 January 2007.

3.6.2. Coal and coke

According to the Hungarian authorities, coal consumption is not significant in Hungary.

Some 96-97 % of national coal consumption would be covered by the exemptions laid down in the energy tax Directive (electricity production, sectors outside the scope of the Directive, etc ...) and by the requested exemption for district heating. At this stage, taxing the remaining total consumption, amounting to 4600 TJ, would lead to disproportionate administrative costs.

In addition, national coal production and consumption are in decline. Taxing coal would accelerate the decline resulting in the closure of mines and increased unemployment, thus leading to risks of social unrest.

The Hungarian authorities do not consider that such exemption would distort the functioning of the internal market.

By the end of the requested transitional period, 31 December 2009, Hungary notes that it will be ready to create an effective system of taxation of coal, as well as an efficient enforcement infrastructure.

Assessment

The Commission is of the view that the request is proportionate if limited to 2008. Due to the specific problems to be tackled, in particular administrative costs, progressive alignment should not be required.

The Commission concludes that Hungary should be authorised to exempt coal and coke from taxation until 1 January 2009.

3.7. Malta

By letter dated 10 December 2003, the Maltese authorities recall that Malta's economic activities are small. If the Directive were strictly applied, a number of economic activities would be in jeopardy. A phased introduction of the energy taxes would help the economy to adjust slowly to the new costs of production. Malta considers that it is unlikely that specific derogations would have any impact on Community trade.

Malta requests transitional periods for i) electricity and ii) all other energy products. Malta asks also for an unlimited derogation for navigation in private pleasure craft and for private pleasure flying.

3.7.1. Electricity taxation

The Maltese authorities state that Malta neither imports nor exports electricity. They request a derogation to introduce, in various phases, the taxation on electricity to reach full compliance by 1 January 2010.

Assessment

The Commission is of the view that the request is proportionate. However, it has to include a progressive phasing in, in order to smoothly reach the minimum levels set by the directive.

The Commission concludes that Malta should be authorised to apply a transitional period until 1 January 2010 to adjust its national level of taxation on electricity. However, the effective tax rate applied to electricity cannot be less than 50% of the relevant Community minimum rates as from 1 January 2007.

3.7.2. Other energy products

The Maltese authorities ask for a derogation to implement the new minimum rates on all other energy products (i.e. except electricity) in various phases by 1 January 2010.

Assessment

Considering the unique features of the Maltese economy, the Commission considers that some flexibility is needed for Malta to reach the new minimum rates on motor fuels and heating fuels. As proposed by the Maltese authorities, the transition periods have to include a progressive phasing in, in order to smoothly reach the minimum levels set by the Directive.

Regarding liquid petroleum gas (LPG) distributed to households in cylinders, the Commission recalls that the minimum level of taxation applicable to LPG used for heating purposes is zero.

For solid fuels, the Commission considers that the transitional arrangement should end in 2008 at the latest.

Progressive phasing in of taxation has to be included, in order to smoothly reach the minimum levels set by the directive.

However, for heavy fuel oil, the tax rate currently applied in Malta is 14 EUR /1000 kg, whereas the minimum rate set by the Directive is 15 EUR / 1000 kg. A transition period until 2010 does not, therefore, appear proportionate.

The Commission concludes that Malta should be authorised to apply a transitional period until 1 January 2010 to adjust its national level of taxation on gas oil and kerosene used as propellant to the minimum levels of EUR 330 per 1000 l.

Malta should also be authorised to apply a transitional period until 1 January 2010 to adjust its national level of taxation on unleaded petrol and leaded petrol used as propellant to the relevant minimum levels of taxation.

Malta should be authorised to apply a transitional period until 1 January 2010 to adjust its national level of taxation on natural gas used as heating fuel to the relevant minimum levels of taxation. However, the effective tax rates applied to natural gas used as heating fuel cannot be less than 50% of the relevant Community minimum rates as from 1 January 2007.

Malta should finally be authorised to apply a transitional period until 1 January 2009 to adjust its national level of taxation on solid fuels used as heating fuels to the relevant minimum levels of taxation. However, the effective tax rates applied to the energy products concerned cannot be less than 50% of the relevant Community minimum rates as from 1 January 2007.

3.7.3. Navigation in private pleasure craft and private pleasure flying

The Maltese authorities state that many aircraft and sea craft stop-over in Malta to replenish their onboard stores and other requirements. Particularly in the yachting industry, the supply of duty exempt fuel is offered as an all-inclusive package, which includes also ship stores and maintenance work. This is a significant tourist attraction for Malta. Stopping the fuel derogation would lead to job losses in the bunkering industry.

Assessment

The request for an unlimited derogation cannot be accepted as a matter of principle.

According to Article 14(1)(b) and (c) of the Directive, Member States shall exempt from taxation energy products supplied for use as fuel for the purpose of air navigation other than in private pleasure flying, and energy products supplied for use as fuel for the purposes of navigation within Community waters (including fishing), other than private pleasure craft, and electricity produced on board a craft.

Moreover, the Commission notes that several of the present Member States have been granted similar tax reductions /exemptions in Annex II of the Directive.

Therefore, the Commission could accept a time-limited derogation, until 31 December 2006, in favour of navigation in private pleasure craft and private pleasure flying.

3.8. Poland

By letter dated 14 November 2003, pursuant to Article 57 of the Accession Treaty, Poland requested transitional periods: i) for propellants, ii) for heavy fuel oil, iii) for gas oil used as heating fuel, iv) for natural gas, v) for coal, and vi) for electricity.

In addition, Poland refers to specific derogations to be granted under Article 18(1) of the Directive.

3.8.1. Propellants

The Polish authorities note that the Parliamentary debate in the Sejm on the new excise duty law is not yet finalised. Therefore, the Polish law is not yet fully in line with EU law in that field. In addition, duty rates on fuels are often significantly lower than the minimum rates set by the energy tax Directive and, for diesel, lower than the minimum rate set by Directive 92/82/EEC. The required increases in taxes may lead to adverse socio-economic consequences.

Poland also asks to be allowed to use the exchange rate of the zloty vs. euro as of 1 October 2002, instead of 1 October 2003.

Poland is willing to gradually align the national rates to the Community minimum rates under the following agenda:

- for LPG: until 1 January 2009;
- for leaded petrol: until 1 January 2005;
- for unleaded petrol: until 1 January 2009;

- for gas oil: until 1 January 2012 to reach the new minimum rate of EUR 302 and until 1 January 2015 to reach the minimum rate of EUR 330.

Assessment

Article 13(1) states that the exchange rate to be used for the conversion PLN / EUR at the time of accession is that of 1 October 2003. The provision of Article 13(2) does not apply as the relevant exchange rate varied by more than 5% between 1 October 2002 and 1 October 2003.

According to Article 15(1)(i) of the Directive, Member States may apply, under fiscal control, total or partial exemptions or reductions in the level of taxation to natural gas and LPG used as propellant. No specific arrangement is, therefore, necessary.

Regarding leaded petrol, the tax increase required to reach the minimum rate of EUR 421 (per 1000 litres), would be 15%. According to Article 18(2) of the Directive, Member States with difficulties in implementing the new minimum levels of taxation are allowed a transitional period until 1 January 2007, in order to avoid jeopardising price stability, provided that this does not significantly distort competition. The Commission acknowledges that the two conditions set by this article are met. In conclusion, there is no need for a specific transitional arrangement in this case.

For unleaded petrol, the tax increase required to reach the minimum rate of EUR 359 (per 1000 litres), would be 9.5%. Poland should also be authorised to apply a transitional period until 1 January 2009 to adjust its national level of taxation on unleaded petrol used as propellant to the new minimum level of EUR 359 per 1000 l.

For low sulphur gas oil, the tax increase required to reach the minimum rate of EUR 330 (per 1000 litres), would be 50%. The lengthiest transitional period contemplated in the present proposal for this product is until 1 January 2011 to reach the new minimum rate of EUR 302 and until 1 January 2013 to reach the minimum rate of EUR 330. To allow similar treatment for the accession Member States, taking into account the low present duty rates on gas oil, the Commission acknowledges that such transitional arrangement could also be granted to Poland. An intermediate step increase of the national tax rates should then be planned. The Commission concludes that Poland should be authorised to apply a transitional period until 1 January 2011 to adjust its national level of taxation on gas oil used as propellant to the new minimum level of EUR 302 per 1000 l and until 1 January 2013 to reach EUR 330. However, the effective tax rate applied to gas oil cannot be less than EUR 274 per 1000 l as from 1 January 2008.

3.8.2. Heavy fuel oil

In Poland, heavy fuel oil would be used on a vast scale in heat and power co-generation plants, in local heat generation plants and in industrial heating plants, to generate heat used as a source of central heating and hot water in the municipal economy. It is also used in other industries, in technological processes requiring heat energy e.g. in cement plants, or for production of other building materials. Moreover, the various possibilities, given by the Directive, to differentiate tax rates according to uses (for instance in Article 15 and Article 17), would require time to be implemented

Poland requests until 1 January 2008 for the gradual adjustment of the taxation on heavy fuel oil to the minimum level of EUR 15 per 1000 kg.

Assessment

The Commission is of the view that the request is proportionate. Poland should be authorised to apply a transitional period until 1 January 2008 to adjust its national level of taxation on heavy fuel oil to the new minimum level of EUR 15 per 1000 kg.

3.8.3. Gas oil used as heating fuel

According to the Polish authorities, the particular significance of gas oil used as heating fuel in the economy requires a transitional period due to (a) the possibility of reducing the present excise duty rate on gas oil used as heating fuel and (b) lack of differentiation of excise duty on gas oil used as heating fuel in Poland to reflect its use.

Poland refers also to the possibility of applying lower rates on gas oil used as heating fuel for specific appropriation e.g. for heating purposes of schools, nursery schools and other public utilities.

Poland requests until 1 January 2008 for the gradual adjustment of the taxation on gas oil used as heating fuel to the minimum level of EUR 21 per 1000 l.

Assessment

The present rate applied to gas oil used as heating fuel in Poland is 42.7 euros per 1000 l, which is well above the minimum rate set by the Directive (21 euros / 1000 l).

The Commission is of the view that Poland refers firstly to an issue connected to the marking of gas oil. The Commission recalls that Poland will have to mark gas oil when this product is released for consumption and taxed at a level different from the normal rate¹⁵. No specific arrangement is therefore necessary.

Secondly, the Commission understands that Poland requests the possibility to apply a reduced rate of excise duty to gas oil used by schools, nursery schools and other public utilities. A similar possibility is granted in the Directive – see Article 18(10).

The Commission concludes that Poland should be authorised to apply total or partial exemptions or reductions for gas oil used as heating fuel by schools, nursery schools and other public utilities, in respect of the activities or transactions in which they engage as public authorities until 1 January 2008.

3.8.4. Natural gas

Natural gas is at present not subject to excise duty in Poland. According to the Polish authorities, the share of natural gas in final energy consumption slightly exceeded 11% in 2000. Poland would, therefore, be eligible to the possibility of a tax exemption laid down in Article 15(1)(g) of the Directive.

However, imposing excise duty on natural gas would pose a direct burden on buyers of this energy product, which might result in their withdrawal from using this environmentally-friendly energy carrier. Inflation would rise by 2%. Bearing in mind that Polish citizens'

¹⁵ See Council Directive 95/60/EC of 27 November 1995 on fiscal marking of gas oils and kerosene (OJ L 291 of 6.12.1995, p. 46).

incomes are lower than the European Union average, the imposition of excise duty on natural gas would, in particular, slow down the rate of gas industry development. An additional consequence would be a deterioration of competitiveness of products generated by the Polish economy. Finally, the Polish excise duty administration would be confronted with huge difficulties.

Therefore, Poland requests a permanent derogation or a transitional period to adjust the national level of taxation on natural gas to the minimum levels until 31 December 2018, or until the national share of natural gas in final energy consumption reaches 25%.

Assessment

The request for an unlimited derogation cannot be accepted as a matter of principle.

The estimates put forward by the Polish authorities do not seem to include the possibilities of tax exemption given by the Directive. For instance, natural gas used by households could be exempted.

The Commission does not see any specific argument, which would make the Polish situation different from the situations met in other Member States, as far as natural gas taxation is concerned. The Commission considers that the long-term possibility of applying a tax exemption to natural gas, given by Article 15(1)(g), strikes an adequate balance between internal market, economic, environmental and energy policy objectives. No specific transitional arrangement is proposed by the Commission.

3.8.5. Coal

At present, coal is not an excisable commodity in Poland. The Polish authorities argue that imposing excise duty on this product would have a huge impact on the energy and industrial sector. The length of the transitional periods for fuels that Poland requires would have to be granted in connection with the purchasing power of the Polish population. The hard coal sector in Poland has been undergoing a process of restructuring. The aim of restructuring is, *inter alia*, to adjust the existing production capacities to provide opportunities for profitable coal sales. A rise in coal prices due to taxation would undoubtedly affect coal sales, thus exacerbating the sector's financial position and complicating the process of its restructuring. The coal sector reform is a lengthy and costly process, and the necessity of cutting employment in collieries would result in unemployment growth in the Silesian region so giving rise to social discontent. Therefore, any additional tax burdens would be seen as an obstacle to the restructuring of the mining industry. District heating represents 3% of Polish consumption of coal. Finally, the Polish excise duty administration would be confronted with huge difficulties.

Therefore, Poland requests a permanent derogation or a transitional period to adjust the national level of taxation on coal to the minimum levels until 1 January 2018.

Assessment

The request for an unlimited derogation cannot be accepted as a matter of principle.

The estimates put forward by the Polish authorities do not seem to include the possibilities of tax exemption given by the Directive. For instance, coal used by households could be exempted. Coal used to produce electricity should, in principle, be exempted. The Commission considers that the bulk of Polish coal consumption enjoys a possibility for a tax

exemption according to the Directive. This view is confirmed by the data annexed to the letter of the Polish authorities of 14 November 2003. District heating deserves specific attention.

The Commission concludes that Poland should be authorised to apply a transitional period until 1 January 2010 to adjust its national level of taxation on coal used for district heating purposes to the relevant minimum level of taxation. However, the effective tax rate applied to the energy product concerned cannot be less than 50% of the relevant Community minimum rate as from 1 January 2007.

Poland should be authorised to apply a transitional period until 1 January 2009 to adjust its national level of taxation on coal used for other purposes than district heating to the relevant minimum levels of taxation. However, the effective tax rates applied to such product cannot be less than 50% of the relevant Community minimum rates as from 1 January 2007.

3.8.6. Electricity

Excise duties on electricity are well above the minimum rates set by the Directive. Poland requests until 1 January 2008 to implement the Community electricity taxation system.

Assessment

The request relates to the time period required to transpose the measures concerning electricity in the energy tax Directive in Polish legislation.

The Directive contains provisions, which make electricity taxation rather simple to manage. For instance, there is no suspension regime because electricity is subject to taxation and becomes chargeable at the same time.

However, the Commission considers that Poland should be authorised to apply a transitional period until 1 January 2006 to align its current electricity taxation system with the Community framework.

3.8.7. Derogations under Article 18(1) of the Directive

The Polish authorities are of the view that the following exemptions, which are presently in force, are consistent with Community law:

aviation fuel and turbo-combustion engine fuels and engine oils for aviation engines, sold by the producer of such fuels to the order of:

- the Minister of National Defence or the competent minister for internal affairs, for purposes of the aviation industry;
- the Agency of Material Reserves to supplement state reserves;
- organisational units of sanitary aviation for purposes of such units;
- gas oil for ships engines and engines for sea technology and engine oils for ship engines and for sea technology sold by the producer of such fuel to the order of the Agency of Stock Reserves to supplement state reserves, and to the order of the Minister of National Defence to be used for purposes of the navy, and to the order of the competent minister for internal affairs to be used for sea engineering;

- aviation fuel, turbo-combustion engine fuel and gas oil for ship engines and engines for sea technology and oils for aviation engines, ship engines and engines for sea technology, sold by the Agency of Stock Reserves to the order of the Minister of National Defence or the competent minister for internal affairs.

Leaded petrol and unleaded petrol with an ethyl alcohol content between 4,5 % and 5 % with respect to the portion equal to amount for each 1 000 litres of such fuels.

Leaded petrol with an ethyl ter[tiary] butyl ether (ETBE) content to 8 % and unleaded petrol with an ETBE content to 5 % obtained from ethyl alcohol with respect to the portion equal to amount for each 1 000 litres of such fuels.

Poland requests the application of Article 18(1) of the Directive to continue to apply these exemptions.

Assessment

Regarding derogations 1), 2) and 3), the Commission considers that their scope largely reflects the scope of Articles 14(1)(b), 14(1)(c) and 15(1)(j) of the Directive. For the part, which would not be covered by the above-mentioned articles, the Commission could accept a time-limited derogation.

Regarding derogations 4 and 5), the Commission notes that Poland enjoys a transitional measure in the Treaty of Accession. Furthermore, Article 16 of the Directive sets the conditions under which tax exemptions may be granted, under fiscal control, in favour of biofuels. Such exemptions must of course also respect other provisions of the Treaty, as Article 90. No specific transitional arrangement is proposed by the Commission.

3.9. Slovenia

By letter dated 10 November 2003, Slovenia requests two transitional periods: for i) electricity, and ii) for natural gas. Slovenia argues that these transitional periods will not impede the functioning of the internal market.

3.9.1. Electricity

According to the Slovenian authorities, the full implementation of minimum level of taxation would exert additional pressure on prices and inflation. This would jeopardise macroeconomic goals of the Slovenian Government, which strive for the reduction of inflation in line with the Maastricht criterion as well as entering ERM II. Slovenia is also willing to encourage rational use of electricity by influencing its price. Slovenia considers that introducing excise duty and gradually increasing the taxation of electricity over a limited period of time would achieve an appropriate balance between the environmental and economic policies. Slovenia requests a transitional period to reach the minimum level of taxation of electricity until 1 January 2007.

Assessment

According to Article 18(2) of the energy tax Directive, Member States with difficulties in implementing the new minimum levels of taxation are allowed a transitional period until 1 January 2007, in order to avoid jeopardising price stability, provided that this does not significantly distort competition.

The Commission acknowledges that the two conditions set by this article are met in the case of electricity taxation in Slovenia. Therefore, no specific transitional arrangement is necessary in this case.

3.9.2. Natural gas

In Slovenia, supplies of natural gas are subject to excise duty and to a CO₂ tax. The total tax burden on natural gas (excluding VAT) would range from 44.12 to 211.8 SIT/GJ (approximately 0.19 to 0.93 EUR/GJ¹⁶).

Natural gas is the key fossil fuel for meeting the goals of the National Energy Programme and the Operational Programme for Reduction in Emissions of Greenhouse Gases. The tax policy represents a very important element in the goals set out in the above areas.

Slovenia endeavours to increase the use of natural gas both to meet the increasing need for electricity and heat and also to replace fossil fuels (coal, fuel oil). The immediate introduction of the minimum excise duty at the prescribed rate could set back the achievement of the goal and jeopardise fulfilment of the commitments that Slovenia has undertaken in connection with the Kyoto protocol.

The Slovenian authorities refer to Article 15(1)(g) of the energy tax Directive, pointing out that the share of natural gas in final energy consumption was 15.1% in 2000.

Slovenia requests a transitional period of 10 years to reach the minimum level of taxation of natural gas, i. e. until 1 May 2014.

Assessment

The Commission is of the view that the request is proportionate. The possibility given by Article 15(1)(g), which meets the request in substance, should be granted to Slovenia. In particular, the share of natural gas in final energy consumption is very close to the threshold set by the Directive (15%).

The Commission concludes that Slovenia should be authorised to apply, under fiscal control, total or partial exemptions or reductions in the level of taxation to natural gas. The total or partial exemptions or reductions may apply until May 2014 or until the national share of natural gas in final energy consumption reaches 25%, whichever is the sooner. However, as soon as the national share of natural gas in final energy consumption reaches 20%, Slovenia should apply a strictly positive level of taxation, which shall increase on a yearly basis in order to reach at least the minimum rate at the end of the period referred to above.

3.10. Slovakia

According to the Slovakian authorities, in their letter of 21 November 2003, natural gas, coal, coke and electricity are not subject to excise duties in their present national legislation.

Immediate application of the minimum rates set by the Directive for these products would mainly lead to an unbearable burden for households. Natural gas is used in particular for both central and individual production of heat for households. Substantial increases in prices of

¹⁶ This calculation uses the EUR exchange rate applicable of 1 October 2002.

energies have recently occurred. Notably, the sale prices of natural gas for households have already increased by 40%, not considering the future introduction of excise duties.

Use of natural gas as fuel is in its infancy. The introduction of excise duties would substantially reduce the current competitive advantage of natural gas as being the more environment-friendly fuel compared to diesel oil.

In addition, this would mean a loss in competitiveness of Slovakian products on the common market, since the price of electricity and natural gas is even today higher or equal to the commodity prices in EU Member States.

Moreover, Slovakia would need a transitional period for the transposition of the Directive.

Therefore, Slovakia requests transitional periods for i) electricity, natural gas and solid fuels, ii) for LPG, and iii) for waste oils and any environment-safe wastes used as fuel.

3.10.1. Electricity, natural gas and solid fuels

Slovakia asks for a transitional period until 31 December 2009 for the exemption of excise duties for electricity, natural gas and solid fuels.

Assessment

The main reason put forward by Slovakia to justify the need for transitional arrangements for electricity, natural gas and solid fuels is the social impact of price increases due to taxes. The Commission recalls that, pursuant to Article 15(1)(h) of the Directive, Member States may apply, under fiscal control, total or partial exemptions or reductions in the level of taxation to electricity, natural gas, coal and solid fuels used by households.

The Commission also notes that the share of natural gas in final energy consumption is well above 15% in Slovakia in 2000.

For solid fuels, the Commission considers that the transitional arrangement should end in 2008 at the latest.

Finally, the request can only be regarded as proportionate if it includes a progressive phasing in, in order to smoothly reach the minimum levels set by the directive.

The Commission concludes that Slovakia should be authorised to apply a transitional period until 1 January 2010 to adjust its national level of taxation on electricity and natural gas used as heating fuel to the relevant minimum levels of taxation. However, the effective tax rates applied to electricity and natural gas used as heating fuel cannot be less than 50% of the relevant Community minimum rates as from 1 January 2007.

Slovakia should be authorised to apply a transitional period until 1 January 2009 to adjust its national level of taxation on solid fuels to the relevant minimum levels of taxation. However, the effective tax rates applied to solid cannot be less than 50% of the relevant Community minimum rates as from 1 January 2007.

3.10.2. LPG

Slovakia asks for the prolongation of the present exemption from taxation on liquid petroleum gas (LPG) used as fuel.

Assessment

According to Article 15(1)(i) of the Directive, Member States may apply, under fiscal control, total or partial exemptions or reductions in the level of taxation to natural gas and LPG used as propellant. Furthermore, the minimum rate for LPG used as heating fuel is zero.

No specific arrangement is therefore required.

3.10.3. Waste oils and any environment-safe wastes used as fuel

Slovakia asks for a derogation in favour of waste oils and any environment-safe wastes used as fuel.

Assessment

The Commission received the information that the so-called "environment-safe wastes" are also mineral oil wastes. The amended Directive 75/439/EEC¹⁷ on the disposal of waste oils requires the Member States to take the necessary steps to give priority to the processing of waste oils by regeneration. The Court of Justice has confirmed that priority¹⁸. Authorising exemptions and reductions in respect of the use of waste oils as fuel is therefore contrary to the objectives of the above Directive in that it encourages the incineration of such oils and, therefore, hinders the development of a market for their regeneration.

The fact that the Council authorised several Member States to continue to apply tax reductions / exemptions in favour of waste oils until 2006 does not change the position of the Commission on that matter.

No specific arrangement is therefore proposed by the Commission.

4. CONCLUSION

The proposed tax Directive puts forward reasoned and proportionate transitional arrangements in favour of the acceding Member States. It should be dealt with as quickly as possible by the European Parliament, the Council and the European Economic and Social Committee, in order to avoid any legal vacuum at the time of enlargement.

Finally, the Commission recalls the obligations resulting from the application of Council regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 88 (ex 93) of the EC Treaty¹⁹, and in particular the rules on existing aids and on new aids. The Commission recommends that acceding States notify the Commission of possible State aid elements in these tax measures under the interim procedure for existing aid laid down in Annex IV, point 3 of the Accession Treaty.

¹⁷ Council Directive 75/439/EEC, 16.6.1975 (OJ L 194, 25.7.1975, p. 23) as amended by Council Directive 87/101/EEC, 22.12.1986 (OJ L 42, 12.2.1987, p. 43).

¹⁸ Case C-102/97 *Commission v. Germany* [1999] ECR I-5051.

¹⁹ OJ L 83 of 27.3.1999, p. 1.

Proposal for a

COUNCIL DIRECTIVE

amending Directive 2003/96/EC as regards the possibility for certain Member States to apply, in respect of energy products and electricity, temporary exemptions or reductions in the levels of taxation

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 Commission²⁰,

Having regard to the opinion of the European Parliament²¹,

Having regard to the opinion of the European Economic and Social Committee²²,

Whereas:

- (1) Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity²³ replaced, with effect from 1 January 2004, Council Directive 92/81/EEC of 19 October 1992 on the harmonisation of the structures of excise duties on mineral oils²⁴ and Council Directive 92/82/EEC of 19 October 1992 on the approximation of the rates of excise duties on mineral oils²⁵. It defines the fiscal structures and the levels of taxation to be imposed on energy products and electricity.
- (2) The minimum rates set by Directive 2003/96/EC are liable to create serious economic and social difficulties for certain Member States, namely the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia, in view of the comparatively low level of excise duties previously applied, the ongoing economic transition of those Member States, their relatively low income levels and their limited ability to offset that additional tax burden by reducing other taxes. In particular the price increases brought about by application of the minimum rates set by Directive 2003/96/EC are likely to have adverse effect on their citizens and national economies, creating for instance an unbearable burden for small and medium-sized enterprises.

²⁰ OJ C [...], [...], p. [...].

²¹ OJ C [...], [...], p. [...].

²² OJ C [...], [...], p. [...].

²³ OJ L 283 of 31.10.2003, p. 51.

²⁴ OJ L 316, 31.10.1992, p. 12. Directive as amended by Directive 94/74/EC (OJ L 365, 31.12.1994, p. 46).

²⁵ OJ L 316, 31.10.1992, p. 19. Directive as amended by Directive 94/74/EC.

- (3) Those Member States should therefore be permitted, on a temporary basis, to apply additional exemptions or reduced levels of taxation, where it will not be detrimental to the proper functioning of the internal market and will not result in the distortion of competition. Moreover, consistent with the principles in accordance with which transitional periods were originally granted under Directive 2003/96/EC, any such measures should be designed to bring about a progressive alignment with the applicable Community minimum rates.
- (4) The Treaty of Accession to the European Union 2003²⁶ provides for transitional arrangements, in the case of Poland and Cyprus, for the implementation of Directive 92/81/EEC and of Directive 92/82/EEC. The Treaty also provides for specific measures on issues relating to energy in Lithuania and Estonia. Those measures should be adequately taken into account in the context of permitting dedicated tax exemptions.
- (5) This Directive does not prejudice the outcome of any procedures relating to distortions of the operation of the single market that may be undertaken, in particular under Articles 87 and 88 of the Treaty. It does not override the requirement for Member States to notify instances of potential State aid to the Commission under Article 88 of the Treaty.
- (6) The wording of Art. 18 (2) should be clarified as regards the references to the transitional period set out in that article.
- (7) Directive 2003/96/EC should therefore be amended accordingly,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 2003/96/EC is amended as follows:

- 1) Article 18 is amended as follows:
 - (a) In paragraph 1, the first subparagraph is replaced by the following:

"By way of derogation from the provisions of the present Directive, the Member States specified in Annex II are authorised to continue to apply the reductions in the levels of taxation or the exemptions set out in that Annex ."
 - (b) In paragraph 2, the words "in paragraphs 3 to 12" are replaced by the words "in paragraphs 3 to 13".

²⁶ O J L 236, 23.9.2003, p. 17.

- 2) The following Article 18a is inserted

"Article 18a

1. By way of derogation from the provisions of the present Directive, the Member States specified in Annex III are authorised to apply the reductions in the levels of taxation or the exemptions set out in that Annex.

Subject to a prior review by the Council, on the basis of a proposal from the Commission, this authorisation shall expire on 31 December 2006 or on the date specified in Annex III."

2. Notwithstanding the periods set out in paragraphs 3 to 11 and provided that this does not significantly distort competition, Member States with difficulties in implementing the new minimum levels of taxation shall be allowed a transitional period until 1 January 2007, particularly in order to avoid jeopardising price stability.
3. The Czech Republic may apply total or partial exemptions or reductions in the level of taxation of electricity, and solid fuels, and natural gas used for district heating purpose, until 1 January 2008.
4. The Republic of Estonia may apply a transitional period until 1 January 2010 to adjust its national level of taxation on gas oil used as propellant to the new minimum level of EUR 330 per 1000 l. However, the level of taxation on gas oil used as propellant shall be not less than EUR 245 per 1000 l as from 1 May 2004.

The Republic of Estonia may apply a transitional period until 1 January 2010 to adjust its national level of taxation on unleaded petrol used as propellant to the new minimum level of EUR 359 per 1000 l. However, the level of taxation on unleaded petrol shall be not less than EUR 287 per 1000 l as from 1 May 2004.

The Republic of Estonia may apply a total exemption of taxation of oil shale until 1 January 2009. Until 1 January 2013, it may furthermore apply a reduced rate in the level of taxation of oil shale, provided that it does not result in taxation at below 50% of the relevant Community minimum rate as from 1 January 2011.

The Republic of Estonia may apply a transitional period until 1 January 2010 to adjust its national level of taxation on shale oil used for district heating purposes to the minimum level of taxation. However, the level of taxation on shale oil used for district heating purposes shall be not less than 50% of the relevant Community minimum rate as from 1 January 2007.

The Republic of Estonia may apply a transitional period until 1 January 2010 to convert its current input electricity taxation system into an output taxation system.

5. The Republic of Latvia may apply a transitional period until 1 January 2011 to adjust its national level of taxation on gas oil and kerosene used as propellant to the new minimum level of EUR 302 per 1000 l and until 1 January 2013 to reach EUR 330. However, the level of taxation on gas oil and kerosene shall be not less than EUR 245 per 1000 l as from 1 May 2004 and not less than EUR 274 per 1000 l as from 1 January 2008.

The Republic of Latvia may apply a transitional period until 1 January 2011 to adjust its national level of taxation on unleaded petrol used as propellant to the new minimum level of EUR 359 per 1000 l. However, the level of taxation on unleaded petrol cannot be less than EUR 287 per 1000 l as from 1 May 2004 and not less than EUR 323 per 1000 l as from 1 January 2008.

The Republic of Latvia may apply a transitional period until 1 January 2010 to adjust its national level of taxation on heavy fuel oil used for district heating purposes to the minimum level of taxation. However, the level of taxation on heavy fuel oil used for district heating purposes cannot be less than 50% of the Community minimum rate as from 1 January 2007.

The Republic of Latvia may apply a transitional period until 1 January 2010 to adjust its national level of taxation on electricity to the relevant minimum levels of taxation. However, the level of taxation on electricity shall be not less than 50% of the relevant Community minimum rates as from 1 January 2007.

The Republic of Latvia may apply a transitional period until 1 January 2009 to adjust its national level of taxation on coal and coke to the relevant minimum levels of taxation. However, the level of taxation on coal and coke shall be not less than 50% of the relevant Community minimum rates as from 1 January 2007.

6. The Republic of Lithuania may apply a transitional period until 1 January 2011 to adjust its national level of taxation on gas oil and kerosene used as propellant to the new minimum level of EUR 302 per 1000 l and until 1 January 2013 to reach EUR 330. However, the level of taxation on gas oil and kerosene shall be not less than EUR 245 per 1000 l as from 1 May 2004 and not less than EUR 274 per 1000 l as from 1 January 2008.

The Republic of Lithuania may apply a transitional period until 1 January 2011 to adjust its national level of taxation on unleaded petrol used as propellant to the new minimum level of EUR 359 per 1000 l. However, the level of taxation on unleaded petrol shall be not less than EUR 287 per 1000 l as from 1 May 2004 and not less than EUR 323 per 1000 l as from 1 January 2008.

7. The Republic of Hungary may apply a transitional period until 1 January 2010 to adjust its national level of taxation on electricity, natural gas, coal and coke used for district heating purposes, to the relevant minimum levels of taxation. However, the level of taxation on the energy products concerned, and on electricity, used for district heating purposes, shall be not less than 50% of the relevant Community minimum rates as from 1 January 2007.
8. The Republic of Malta may apply a transitional period until 1 January 2010 to adjust its national level of taxation on electricity. However, the levels of taxation on electricity shall be not less than 50% of the relevant Community minimum rates as from 1 January 2007.

The Republic of Malta may apply a transitional period until 1 January 2010 to adjust its national level of taxation on gas oil and kerosene used as propellant to the minimum levels of EUR 330 per 1000 l. However, the levels of taxation on gas oil and kerosene used as propellant shall be not less than EUR 245 per 1000 l as from 1 May 2004.

The Republic of Malta may apply a transitional period until 1 January 2010 to adjust its national level of taxation on unleaded petrol and leaded petrol used as propellant to the relevant minimum levels of taxation. However, the levels of taxation on unleaded petrol and leaded petrol shall be not less than EUR 287 per 1000 l and EUR 337 per 1000 l respectively as from 1 May 2004.

The Republic of Malta may apply a transitional period until 1 January 2010 to adjust its national level of taxation on natural gas used as heating fuels to the relevant minimum levels of taxation. However, the effective tax rates applied to natural gas shall be not less than 50% of the relevant Community minimum rates as from 1 January 2007.

The Republic of Malta may apply a transitional period until 1 January 2009 to adjust its national level of taxation on solid fuels to the relevant minimum levels of taxation. However, the effective tax rates applied to the energy products concerned shall be not less than 50% of the relevant Community minimum rates as from 1 January 2007.

9. The Republic of Poland may apply a transitional period until 1 January 2009 to adjust its national level of taxation on unleaded petrol used as propellant to the new minimum level of EUR 359 per 1000 l. However, the level of taxation on unleaded petrol shall be not less than EUR 287 per 1000 l as from 1 May 2004.

The Republic of Poland may apply a transitional period until 1 January 2011 to adjust its national level of taxation on gas oil used as propellant to the new minimum level of EUR 302 per 1000 l and until 1 January 2013 to reach EUR 330. However, the level of taxation on gas oil shall be not less than EUR 245 per 1000 l as from 1 May 2004 and not less than EUR 274 per 1000 l as from 1 January 2008.

The Republic of Poland may apply a transitional period until 1 January 2008 to adjust its national level of taxation on heavy fuel oil to the new minimum level of EUR 15 per 1000 kg. However, the level of taxation on heavy fuel oil shall be not less than EUR 13 per 1000 kg as from 1 May 2004.

The Republic of Poland may apply a transitional period until 1 January 2010 to adjust its national level of taxation on coal used for district heating to the relevant minimum level of taxation. However, the level of taxation on coal used for district heating shall be not less than 50% of the relevant Community minimum rate as from 1 January 2007.

The Republic of Poland may apply a transitional period until 1 January 2009 to adjust its national level of taxation on coal used for heating purposes other than district heating to the relevant minimum levels of taxation. However, the level of taxation on coal used for heating purposes other than district heating shall be not less than 50% of the relevant Community minimum rates as from 1 January 2007.

The Republic of Poland may, until 1 January 2008, apply total or partial exemptions or reductions for gas oil used as heating fuel by schools, nursery schools and other public utilities, in respect of the activities or transactions in which they engage as public authorities.

The Republic of Poland may apply a transitional period until 1 January 2006 to align its electricity taxation system with the Community framework.

10. The Republic of Slovenia may apply, under fiscal control, total or partial exemption or reduction in the level of taxation to natural gas. The total or partial exemption or reduction may apply until May 2014 or until the national share of natural gas in final energy consumption reaches 25%, whichever is the sooner. However, as soon as the national share of natural gas in final energy consumption reaches 20%, it shall apply a strictly positive level of taxation, which shall increase on a yearly basis in order to reach at least the minimum rate at the end of the period referred to above.
11. The Slovak Republic may apply a transitional period until 1 January 2010 to adjust its national level of taxation on electricity and natural gas used as heating fuel to the relevant minimum levels of taxation. However, the level of taxation on electricity and natural gas used as heating fuel shall be not less than 50% of the relevant Community minimum rates as from 1 January 2007.

The Slovak Republic may apply a transitional period until 1 January 2009 to adjust its national level of taxation on solid fuels to the relevant minimum levels of taxation. However, the level of taxation on solid fuels shall be not less than 50% of the relevant Community minimum rates as from 1 January 2007.
12. Within the transitional periods established, Member States shall progressively reduce their respective gaps with respect to the new minimum levels of taxation. However, where the difference between the national level and the minimum level does not exceed 3% of that minimum level, the Member State concerned may wait until the end of the period to adjust its national level."
- 3) An Annex III, the text of which is set out in the Annex to this Directive, is added.

Article 2

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 2 May 2004 at the latest. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.
2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 3

This Directive shall enter into force on 1 May 2004.

Article 4

This Directive is addressed to the Member States.

Done at Brussels, [...]

*For the Council
The President*

ANNEX

“ANNEX III

Reduced rates of taxation and exemptions from such taxation referred to in Article 18a(1):

- 1) Latvia
 - for energy products and electricity used in local public passenger transport vehicles.
- 2) Lithuania
 - for coal, coke and lignite until 1 January 2007;
 - for natural gas and electricity until 1 January 2010;
 - for orimulsion used for purposes other than to produce electricity or heat until 1 January 2010.
- 3) Hungary
 - for coal and coke until 1 January 2009.
- 4) Malta
 - for navigation in private pleasure craft;
 - for air navigation other than that covered by Article 14(1)(b) of Directive 2003/96/EC.
- 5) Poland
 - for aviation fuel and turbo-combustion engine fuels and engine oils for aviation engines, sold by the producer of such fuels to the order of the Minister of National Defence or the competent minister for internal affairs, for purposes of the aviation industry, or the Agency of Material Reserves to supplement state reserves, or organisational units of sanitary aviation for purposes of such units;
 - gas oil for ship engines and engines for sea technology and engine oils for ship engines and for sea technology, sold by the producer of such fuel to the order of the Agency of Stock Reserves to supplement state reserves, or to the order of the Minister of National Defence to be used for purposes of the navy, or to the order of the competent minister for internal affairs to be used for sea engineering;
 - aviation fuel, turbo-combustion engine fuel and gas oil for ship engines and engines for sea technology and oils for aviation engines, ship engines and engines for sea technology, sold by the Agency of Stock Reserves to the order of the Minister of National Defence or the competent minister for internal affairs.”