



COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a

COUNCIL DIRECTIVE

**amending Directive 2003/96/EC as regards the possibility for Cyprus
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. On 28 January 2004, the Commission presented on this regard a 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 taxation³. All Acceding states, except for Cyprus, are included in the proposal. This is due to the fact that Cyprus did not submit at that time any request for transitional arrangements.

However, the situation in Cyprus has evolved, and the Cyprus authorities introduced in early February 2004 specific demands for transitional periods.

The Commission, therefore, has to propose a directive, based on Article 93 of the EC Treaty, to amend the Directive.

2. THE ACCESSION TREATY

Cyprus benefits from two specific derogations in the Treaty of Accession to the European Union 2003⁴:

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.

Directives 92/81/EEC and 92/82/EEC were repealed as from 31 December 2003.

3. THE ENERGY TAX DIRECTIVE

The 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. The Directive will reduce distortions of

¹ OJ L 283, 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 COM(2004) 42 of 28.1.2004.

⁴ OJ L 236, 23.9.2003, p. 17.

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.

4. TRANSITIONAL ARRANGEMENTS FOR CYPRUS

According to the letter of 11 February 2004, Cyprus requests transitional arrangements regarding motor fuels only.

Cyprus will apply the minimum rates applicable to motor fuels set by Directive 92/82/EEC at the date of the Accession. For 1000 litres, these are respectively EUR 245 for gas oil and kerosene, and 287 for unleaded petrol.

However, as a result of implantation of Community "acquis", increases in the excise duty and in the VAT rate will significantly raise the final price of motor fuels. The price of unleaded petrol rose from £0,378 cents (€ 0,65) per litre on 21.10.1999 to currently £0,428 cents (€0,74), whereas the price of diesel, which is widely used by lower middle income households as a significant proportion of them has diesel driven cars, increased from £0,146 cents (€ 0,25) per litre on 21.10.1999 to £0,36 cents (€ 0,62) currently.

The immediate setting of the new minimum tax rates would aggravate the problems of competitiveness the manufacturing sector is confronted with, and would have a significant social impact on the expenses of households. This evolution is of course made even more difficult by the high world oil prices.

Cyprus considers that the following transitional periods are needed:

- for unleaded petrol: until 1 January 2010 to reach the minimum rate of EUR 359;
- for gas oil and kerosene: until 1 January 2008 to reach the minimum rate of EUR 302 and until 1 January 2010 to reach the minimum rate of EUR 330.

Assessment

While taking into account the specific needs of Cyprus, the Commission assessed the requests against the same principles that were applied to the granting of transitional periods to present Member States and to other Acceding States in the recent proposal of the Commission. 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.

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.

It should be recalled that current Member States were granted transitional periods on motor fuels. Moreover, the requests submitted by Cyprus are similar to those presented by several other Acceding States. The lengthiest transitional periods granted in the Directive regarding gas oil and unleaded petrol are respectively 1 January 2012 and 1 January 2010. The proposal of 28 January 2004 contains transitional arrangements which are even longer in some cases.

According to estimates made by the Commission, the implementation of the new minimum rates on gas oil and unleaded petrol would lead to an increase of the general price index, which would be higher than the ones expected for most present Member States enjoying a transition period until 2012 and similar to the ones of acceding States.

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

The Commission concludes that Cyprus should be authorised to apply a transitional period until 1 January 2008 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 2010 to reach EUR 330.

Cyprus 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.

5. CONCLUSION

The proposed tax Directive puts forward reasoned and proportionate transitional arrangements in favour of Cyprus. 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 Treaty⁵, 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.

⁵ OJ L 83, 27.3.1999, p. 1.

Proposal for a

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amending Directive 2003/96/EC as regards the possibility for Cyprus 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 Commission⁶,

Having regard to the opinion of the European Parliament⁷,

Having regard to the opinion of the European Economic and Social Committee⁸,

Whereas:

- (1) Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity⁹ 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 oils¹⁰ and Council Directive 92/82/EEC of 19 October 1992 on the approximation of the rates of excise duties on mineral oils¹¹. 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, among which Cyprus, in view of the comparatively low level of excise duties previously applied, the ongoing economic transition, 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.
- (3) Cyprus 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

⁶ OJ C , , p. .

⁷ OJ C , , p. .

⁸ OJ C , , p. .

⁹ OJ L 283, 31.10.2003, p. 51.

¹⁰ OJ L 316, 31.10.1992, p. 12. Directive as amended by Directive 94/74/EC (OJ L 365, 31.12.1994, p. 46).

¹¹ OJ L 316, 31.10.1992, p. 19. Directive as amended by Directive 94/74/EC (OJ L 365, 31.12.1994, p. 46).

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) 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.
- (5) The wording of Art. 30 of Directive 2003/96/EC should be clarified.
- (6) Directive 2003/96/EC should therefore be amended accordingly,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 2003/96/EC is amended as follows:

- (1) The following Article 18a is inserted

"Article 18a

1. Notwithstanding the periods set out in paragraph 2 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.
2. The Republic of Cyprus may apply a transitional period until 1 January 2008 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 2010 to reach EUR 330. However, the level 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 Cyprus 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.

3. 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."
- (2) In Article 30 the following paragraph is added:

"References to the repealed Directives shall be construed as references to this Directive."

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
[...]