

CHATHAM PARTNERS

Synopsis of Fit For 55 drafts IV COM(2021) 563 final

- ▶ **Directive 2003/96/EC restructuring the Community framework for the taxation of energy products and electricity**

August 2021

Dear Reader

The dynamic of the legislative initiatives both at the EU-level and across EU member states is currently unprecedented. We are seeing a new urgency to decarbonise large parts of carbon-intensive sectors combined with the need to prevent carbon-leakage and the transfer of production to economies with less scrutiny on (still) carbon-intensive production processes. The task requires a holistic overhaul of the current framework for carbon-pricing, carbon-quotas, furthering and further enhancement of decarbonisation more broadly.

Drafts of the legislative package have recently been published and will be discussed and amended over the coming months. However, the timing of the adoption of the published drafts depends heavily on the political process. One important legal act due for revision is the Energy Taxation Directive, for which this document provides a synopsis for those wanting to better understand what changes are discussed, what to consider for future industries and business cases as well as to focus potential lobbying efforts.

We hope you will find this helpful and remain at your disposal for any questions or queries you may have.

Kind regards



Felix Fischer, MBA (Stellenbosch)
Partner
CHATHAM PARTNERS
Neuer Wall 50
20354 Hamburg
<https://chatham.partners>
T + 49 (0) 40 30 39 63 11
M + 49 (0) 174 24 32 415
E felix.fischer@chatham.partners



Dr. Christos Paraschiakos
Senior Associate
CHATHAM PARTNERS
Neuer Wall 50
20354 Hamburg
<https://chatham.partners>
T + 49 (0) 40 30 39 63 212
M + 49 (0) 174 637 10 48
E christos.paraschiakos@chatham.partners

Please note that this synopsis is a free service provided by Chatham Partners LLP and meant as a convenience working document; we take no responsibility for its accuracy nor completeness nor do we accept any liability for any mistakes in this document or made based on this document.

Legislative Amendments¹

Amendments to Directive 2003/96/EC

Directive 2003/96/EC	Proposal
<i>Article 1</i>	<i>Article 1</i>
Member States shall impose taxation on energy products and electricity in accordance with this Directive.	1. Member States shall impose taxation on energy products and electricity in accordance with this Directive.
<i>Article 2</i>	<i>Article 2</i>
1. For the purposes of this Directive, the term 'energy products' shall apply to products:	1. For the purposes of this Directive, the term 'energy products' shall apply to products:
(a) falling within CN codes 1507 to 1518 , if these are intended for use as heating fuel or motor fuel;	(a) falling within CN codes 1507 to 1518, if these are intended for use as heating fuel or motor fuel;
(b) falling within CN codes 2701 , 2702 and 2704 to 2715 ;	(b) falling within CN codes 2207, 2208 90 91 and 2208 90 99 if these are intended for use as heating fuel or motor fuel and are exempted from the harmonized excise duty on alcohol and alcoholic beverages in accordance with Article 27(1), points (a) or (b), of Directive 92/83/EC;
(c) falling within CN codes 2901 and 2902 ;	(c) falling within CN codes 2701 to 2715;
(d) falling within CN code 2905 11 00 , which are not of synthetic origin, if these are intended for use as heating fuel or motor fuel;	(d) falling within CN code 2804 10 if these are intended for use as heating fuel or motor fuel;
	(e) falling within CN code 2814, if these are intended for use as motor fuel;

¹ Please note that we chose not to correct editorial errors in the European Commission's draft.

Directive 2003/96/EC

- (e) falling within CN code 3403 ;
- (f) falling within CN code 3811 ;
- (g) falling within CN code 3817 ;
- (h) falling within CN codes 3824 99 86 , 3824 99 92 (excluding anti-rust preparations containing amines as active constituents and inorganic composite solvents and thinners for varnishes and similar products), 3824 99 93 , 3824 99 96 (excluding anti-rust preparations containing amines as active constituents and inorganic composite solvents and thinners for varnishes and similar products), 3826 00 10 and 3826 00 90 if these are intended for use as heating fuel or motor fuel.

2. This Directive shall also apply to:

Electricity falling within CN code 2716.

3. When intended for use, offered for sale or used as motor fuel or heating fuel, energy products other than those for which a level of taxation is specified in this Directive shall be taxed according to use, at the rate for the equivalent heating fuel or motor fuel.

~~In addition to the taxable products listed in paragraph 1, any product intended for use, offered for sale or used as motor fuel, or as an additive~~

Proposal

- (f) falling within CN codes 2901 and 2902;
- (g) falling within CN codes 2905 11 00, which are not of synthetic origin, if these are intended for use as heating fuel or motor fuel;
- (h) falling within CN code 2909 19 10 and 2909 19 90, the latter if intended for use as heating fuel or motor fuel;
- (i) falling within CN code 3403;
- (j) falling within CN code 3811;
- (k) falling within CN code 3814, if these are intended for use as heating fuel or motor fuel;
- (l) falling within CN code 3817;
- (m) falling within CN code 3823 19, if these are intended for use as heating fuel or motor fuel;
- (n) falling within CN codes 3824 99 86, 3824 99 92 (excluding anti-rust preparations containing amines as active constituents and inorganic composite solvents and thinners for varnishes and similar products), 3824 99 93, 3824 99 96 (excluding anti-rust preparations containing amines as active constituents and inorganic composite solvents and thinners for varnishes and similar products), 3826 00 10 and 3826 00 90 if these are intended for use as heating fuel or motor fuel;
- (o) falling within CN codes 4401 and 4402, if these are intended for use as heating fuel in installations with a total rated thermal input equal to or exceeding 5 MW.

3. When intended for use, offered for sale or used as motor fuel or heating fuel, energy products other than those for which minimum levels of taxation are specified in this Directive shall be taxed according to use, at the rate for the equivalent heating fuel or motor fuel.

Products other than energy products, if intended for use, offered for sale or used as motor fuel

Directive 2003/96/EC

~~or extender in motor fuels, shall be taxed at the rate for the equivalent motor fuel.~~

~~In addition to the taxable products listed in paragraph 1, any other hydrocarbon, except for peat, intended for use, offered for sale or used for heating purposes shall be taxed at the rate for the equivalent energy product.~~

~~4. This Directive shall not apply to:~~

~~(a) output taxation of heat and the taxation of products falling within CN codes 4401 and 4402;~~

~~(b) the following uses of energy products and electricity:~~

~~— energy products used for purposes other than as motor fuels or as heating fuels;~~

~~— dual use of energy products~~

~~— An energy product has a dual use when it is used both as heating fuel and for purposes other than as motor fuel and heating fuel. The use of energy products for chemical reduction and in electrolytic and metallurgical processes shall be regarded as dual use;~~

~~— electricity used principally for the purposes of chemical reduction and in electrolytic and metallurgical processes;~~

~~— electricity, when it accounts for more than 50 % of the cost of a product. 'Cost of a product' shall mean the addition of total purchases of goods and services plus personnel costs plus the consumption of fixed capital, at the level of the business, as defined in Article 11. This cost is calculated per unit on average. 'Cost of electricity' shall mean the actual purchase value of electricity or the cost of production of electricity if it is generated in the business;~~

~~— mineralogical processes~~

~~— 'Mineralogical processes' shall mean the processes classified in the NACE nomenclature under code DI 26 'manufacture of other non-~~

Proposal

shall be taxed at the rate for the equivalent motor fuel.

Additives and extenders to motor fuels, other than water, shall be taxed at the rate for the equivalent motor fuel.

Hydrocarbons other than those listed in paragraph 1 and intended for use, offered for sale or used for heating purposes shall be taxed at the rate for the equivalent energy product.

4. Taxable products, referred to in paragraphs 1 and 3, produced or derived from biomass are subject under fiscal control to the specific levels of taxation set out for those products in accordance with this Directive, provided that they fulfil either of following criteria:

a) the sustainability and greenhouse gas saving criteria set out in Article 29 of Directive (EU) 2018/2001, excluding high indirect land-use change-risk products set out in Article 26(2) of that Directive;

b) are produced from the feedstock listed in Annex IX of Directive (EU) 2018/2001. For the purposes of this Directive the definitions in Article 2 points (24), for 'biomass', (28), for 'biogas', (32), for 'bioliquids', (33), for 'biofuels' and (34), for 'advanced biofuels', of Directive (EU) 2018/2001 shall apply.

For the purposes of this Directive, 'advanced' biogas, bioliquids and products falling within CN codes 4401 and 4402 shall mean products produced from the feedstock listed in part A of Annex IX to Directive (EU) 2018/2001. Biofuels, biogas and bioliquids produced from the feedstock listed in part B of Annex IX to that Directive shall be considered equivalent to advanced products.

Directive 2003/96/EC

~~metallic mineral products' in Council Regulation (EEC) No 3037/90 of 9 October 1990 on the statistical classification of economic activities in the European Community.~~

~~— However, Article 20 shall apply to these energy products.~~

~~5. References in this Directive to codes of the combined nomenclature shall be to those of Commission Regulation (EC) No 2031/2001 of 6 August 2001, amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff.~~

~~A Decision to update the codes of the combined nomenclature for the products referred to in this Directive shall be taken once every year in accordance with the procedure laid down in Article 27. The Decision must not result in any changes in the minimum tax rates applied in this Directive or to the addition or removal of any energy products and electricity.~~

Proposal

5. Taxable products, referred to in paragraphs 1 and 3, falling within the definition of 'renewable fuels of non-biological origin' or 'low-carbon fuels', may be subject under fiscal control to the specific levels of taxation set out for those products in accordance with this Directive, where:

a) 'renewable fuels of non-biological origin', shall mean fuels other than biofuels, bioliquids or biogas, the energy content of which is derived from renewable sources other than biomass;

b) 'low-carbon fuels' shall mean low-carbon hydrogen and synthetic gaseous and liquid fuels the energy content of which is derived from low-carbon hydrogen, as well as any fossil-based fuels, which meet the technical screening criteria for determining the conditions under which a specific economic activity qualifies as contributing substantially to climate change mitigation according to Article 10 of Regulation (EU) 2020/852 of the European Parliament and of the Council and Annex I to Delegated Regulation (EU) [...] [...]. 'Recycled Carbon Fuels', as defined by Article 2(35) of Directive (EU) 2018/2001, shall be included in this category.

6. Where part of a taxable product consists of one or more products referred to in the previous paragraphs, taxation of those parts shall be determined accordingly based on this Directive, independently from the CN code under which the product falls as a whole.

7. For the purposes of paragraph 1, points (a), (b), (d), (e), (g), (h), (k), (m), (n) and (o) of this Article, and of Article 21(1), points (a), (b), (h), (i), (l), (m) and (n), products destined for supply shall be considered to be intended for use as heating fuel or motor fuel when the supplier is aware, or should reasonably be aware, that the

Directive 2003/96/EC**Proposal**

recipient intends to use the products as heating fuel or motor fuel. Products referred to in paragraph 1, point (a) of this Article and Article 21(1), point (a) shall not be considered to be intended for use as heating fuel or motor fuel if they are supplied to a producer of goods referred to in paragraph 1, point (n) of this Article and Article 21(1), point (n).

8. References in this Directive to codes of the Combined Nomenclature shall be understood as references to the codes of Combined Nomenclature in Council Regulation (EEC) No 2658/8745 as amended by Commission Implementing Regulation (EU) 2020/1577.

Where the Regulation referred to in the first subparagraph is replaced or where an amendment to the Combined Nomenclature necessitates a modification of the codes referred to in this Directive, the Commission is empowered to adopt delegated acts in accordance with Article 29 in order to update the codes of the Combined Nomenclature of the products referred to in this Directive or in order to update the reference provided for in the first subparagraph so as to align it to the applicable version of the Combined Nomenclature.

Those delegated acts shall not result in any changes in the minimum tax rates set in this Directive or in the addition or removal of any energy products and electricity.

Article 3

~~References in Directive 92/12/EEC to 'mineral oils' and 'excise duty', insofar as it applies to mineral oils, shall be interpreted as covering all energy products, electricity and national indirect taxes referred to respectively in Articles 2 and 4(2) of this Directive.~~

Article 3

1. This Directive shall not apply to the following:

(a) output taxation of heat;

Directive 2003/96/EC**Proposal**

(b) the following uses of energy products and electricity:

- energy products used for purposes other than as motor fuels or as heating fuels,
- dual use of energy products

An energy product has a dual use when it is used both as heating fuel and for purposes other than as motor fuel and heating fuel. The use of energy products for chemical reduction and in electrolytic and metallurgical processes, when energy products are used directly in or to provide a direct energy input to the process, or their consumption is connected to the process, shall be regarded as dual use,

- electricity used principally for the purposes of chemical reduction and in electrolytic and metallurgical processes, when electricity is used directly in or to provide a direct energy input to the process, or its consumption is connected to the process,

2. Article 21 shall apply to energy products used as provided for in paragraph 1, point (b) of this Article.

*Article 4**Article 4*

1. The levels of taxation which Member States shall apply to the energy products and electricity listed in Article 2 may not be less than the minimum levels of taxation prescribed by this Directive.
2. For the purpose of this Directive 'level of taxation' is the total charge levied in respect of all indirect taxes (except VAT) calculated directly or indirectly on the quantity of energy products and electricity at the time of release for consumption.

Article 5

~~Provided that they respect the minimum levels of taxation prescribed by this Directive and that they are compatible with Community law, differentiated rates of taxation may be applied by Member States, under fiscal control, in the following cases:~~

- ~~— when the differentiated rates are directly linked to product quality;~~

Directive 2003/96/EC

~~— when the differentiated rates depend on quantitative consumption levels for electricity and energy products used for heating purposes;~~

~~— for the following uses: local public passenger transport (including taxis), waste collection, armed forces and public administration, disabled people, ambulances;~~

~~— between business and non-business use, for energy products and electricity referred to in Articles 9 and 10.~~

Proposal*Article 5*

1. Member States shall ensure that where equal minimum levels of taxation are laid down in Annex I in relation to a given use, equal levels of taxation are fixed for products put to that use. Member States shall also replicate at any time the ranking of minimum levels of taxation as laid down in Annex I in relation to different products for each given use.

For the purposes of the first subparagraph, each use for which a minimum level of taxation is identified, respectively, in Tables A, B and C of Annex I shall be considered to be a single use, unless otherwise specified in this Directive.

For the purposes of ranking mentioned in the first subparagraph, electricity shall be considered together with other motor fuels and heating fuels indicated in Tables B and C of Annex I, except when Member States apply a specific level of taxation to electricity used to charge electric vehicles, in which case electricity shall be considered together with motor fuels indicated in Table A of Annex I, unless otherwise specified in this Directive.

For the purposes of the third subparagraph of this paragraph, 'electric vehicle' shall mean an electric vehicle as defined in Article 2, point (2) of Directive 2014/94/EU of the European Parliament and of the Council.

2. The minimum levels of taxation laid down in this Directive shall be adapted every year starting from 1 January 2024 to take account of the

Directive 2003/96/EC**Proposal**

changes in the harmonised index of consumer prices excluding energy and unprocessed food as published by Eurostat. The minimum levels shall be adapted automatically, by increasing or decreasing the base amount in euro by the percentage change in that index over the preceding calendar year.

The Commission is empowered to adopt delegated acts in accordance with Article 29 to amend the minimum levels of taxation as referred to in the first subparagraph.

*Article 6**Article 6*

Member States shall be free to give effect to the exemptions or reductions in the level of taxation prescribed by this Directive either:

- (a) directly,
 - (b) by means of a differentiated rate,
- or
- (c) by refunding all or part of the amount of taxation.

*Article 7**Article 7*

~~1. As from 1 January 2004 and from 1 January 2010, the minimum levels of taxation applicable to motor fuels shall be fixed as set out in Annex I Table A.~~

As from 1 January 2023, the minimum levels of taxation applicable to motor fuels shall be fixed as set out in Table A of Annex I.

~~Not later than 1 January 2012, the Council, acting unanimously after consulting the European Parliament, shall, on the basis of a report and a proposal from the Commission, decide upon the minimum levels of taxation applicable to gas oil for a further period beginning on 1 January 2013.~~

Without prejudice to Article 5(2), when a transitional period is applicable as provided for in Table A of Annex I, the increase in the minimum levels of taxation shall be fixed at one tenth per year until 1 January 2033. For low-carbon fuels, the minimum level of taxation set for the first year of the transitional period shall apply until 1 January 2033.

~~2. Member States may differentiate between commercial and non-commercial use of gas oil used as propellant, provided that the Community minimum levels are observed and the rate for commercial gas oil used as propellant does not fall below the national level of taxation in force on 1 January 2003, notwithstanding any derogations for this use laid down in this Directive.~~

Directive 2003/96/EC**Proposal**

~~3. 'Commercial gas oil used as propellant' shall mean gas oil used as propellant for the following purposes:~~

~~(a) the carriage of goods for hire or reward, or on own account, by motor vehicles or articulated vehicle combinations intended exclusively for the carriage of goods by road and with a maximum permissible gross laden weight of not less than 7,5 tonnes;~~

~~(b) the carriage of passengers, whether by regular or occasional service, by a motor vehicle of category M2 or category M3, as defined in Council Directive 70/156/EEC of 6 February 1970 on the approximation of the laws of the Member States relating to the type approval of motor vehicles and their trailers.~~

~~4. Notwithstanding paragraph 2, Member States which introduce a system of road user charges for motor vehicles or articulated vehicle combinations intended exclusively for the carriage of goods by road may apply a reduced rate on gas oil used by such vehicles, that goes below the national level of taxation in force on 1 January 2003, as long as the overall tax burden remains broadly equivalent, provided that the Community minimum levels are observed and that the national level of taxation in force on 1 January 2003 for gas oil used as propellant is at least twice as high as the minimum level of taxation applicable on 1 January 2004.~~

Article 8

1. As from 1 January ~~2004~~, notwithstanding Article 7, the minimum levels of taxation applicable to products used as motor fuel for the purposes set out in paragraph 2 shall be fixed as set out in ~~Annex I Table B~~.

Article 8

1. As from 1 January ~~2004~~ **2023**, notwithstanding Article 7, the minimum levels of taxation applicable to products used as motor fuel for the purposes set out in paragraph 2 **of this Article** shall be fixed as set out in **Table B of Annex I**.

Without prejudice to Article 5(2), when a transitional period is applicable as provided for in Table B of Annex I, the increase in the minimum levels of taxation shall be fixed at one tenth per year until 1 January 2033. For low-carbon fuels, the minimum level of taxation set for

Directive 2003/96/EC**Proposal**

2. ~~This Article shall apply to the following in industrial and commercial~~ purposes:

- (a) agricultural, horticultural or ~~piscicultural~~ works, and in forestry;
- (b) stationary motors;
- (c) plant and machinery used in construction, civil engineering and public works;
- (d) vehicles intended for use off the public roadway or which have not been granted authorisation for use mainly on the public roadway.

Article 9

~~1.~~ As from 1 January 2004, the minimum levels of taxation applicable to heating fuels shall be fixed as set out in ~~Annex I Table C~~.

~~2. Member States, which on 1 January 2003 are authorised to apply a monitoring charge for heating gas oil, may continue to apply a reduced rate of EUR 10 per 1 000 litres for that product. This authorisation shall be repealed on 1 January 2007 if the Council, acting unanimously on the basis of a report and a proposal from the Commission, so decides, having noted that the level of the reduced rate is too low to avoid problems of trade distortion between the Member States.~~

Article 10

~~1.~~ As from 1 January 2004, the minimum levels of taxation applicable to electricity shall be fixed as set out in ~~Annex I Table C~~.

the first year of the transitional period shall apply until 1 January 2033.

2. **Paragraph 1** shall apply to the following purposes:

- (a) agricultural, horticultural or **aquaculture** works, and in forestry;
- (b) stationary motors;
- (c) plant and machinery used in construction, civil engineering and public works;
- (d) vehicles intended for use off the public roadway or which have not been granted authorisation for use mainly on the public roadway.

Article 9

As from 1 January 2023, the minimum levels of taxation applicable to heating fuels shall be fixed as set out in **Table C of Annex I**.

Without prejudice to Article 5(2), when a transitional period is applicable as provided for in **Table C of Annex I**, the increase in the minimum levels of taxation shall be fixed at one tenth per year until 1 January 2033. For low-carbon fuels, the minimum level of taxation set for the first year of the transitional period shall apply until 1 January 2033.

Article 10

1. As from 1 January 2023, the minimum levels of taxation applicable to electricity shall be fixed as set out in **Table C Annex I**.

Directive 2003/96/EC**Proposal**

~~2. Above the minimum levels of taxation referred to in paragraph 1, Member States will have the option of determining the applicable tax base provided that they respect Directive 92/12/EEC.~~

Article 11

~~1. In this Directive, 'business use' shall mean the use by a business entity, identified in accordance with paragraph 2, which independently carries out, in any place, the supply of goods and services, whatever the purpose or results of such economic activities.~~

~~The economic activities comprise all activities of producers, traders and persons supplying services including mining and agricultural activities and activities of the professions.~~

~~States, regional and local government authorities and other bodies governed by public law shall not be considered as business entities in respect of the activities or transactions in which they engage as public authorities. However, when they engage in such activities or transactions, they shall be considered as a business in respect of these activities or transactions where treatment as non-business would lead to significant distortions of competition.~~

~~2. With respect to this Directive, the business entity cannot be considered as smaller than a part of an enterprise or a legal body that from an organisational point of view constitutes an independent business, that is to say an entity capable of functioning by its own means.~~

~~3. Where mixed use takes place, taxation shall apply in proportion to each type of use, although where either the business or non-business use is insignificant, it may be treated as nil.~~

~~4. Member States may limit the scope of the reduced level of taxation for business use.~~

Directive 2003/96/EC**Proposal***Article 12**Article 11*

1. Member States may express their national levels of taxation in units other than those specified in Articles 7 to 10 provided that the corresponding levels of taxation, following conversion into those units, are not below the minimum levels specified in this Directive.
2. For energy products specified in Articles 7, 8 and 9, with levels of taxation based on volumes, the volume shall be measured at a temperature of 15° C.

1. Member States may express their national levels of taxation in units other than that specified in Articles 7 to 10 provided that the corresponding levels of taxation, following conversion into those units, are not below the minimum levels specified in this Directive.

2. When volume units are applied, the volume shall be measured at a temperature of 15° C.

*Article 13**Article 12*

1. For Member States that have not adopted the euro, the value of the euro in national currencies to be applied to the value of the levels of taxation shall be fixed once a year. The rates to be applied shall be those obtaining on the first working day of October and published in the Official Journal of the European Union and shall have effect from 1 January of the following calendar year.
2. Member States may maintain the amounts of taxation in force at the time of the annual adjustment provided for in paragraph 1 if the conversion of the amounts of the level of taxation expressed in euro would result in an increase of less than 5 % or EUR 5, whichever is the lower amount, in the level of taxation expressed in national currency.

Article 13

1. Member States shall exempt from taxation under fiscal control energy products and electricity used to produce electricity and electricity used to maintain the ability to produce electricity.
2. By derogation from paragraph 1, Member States may, for reasons of environmental policy, subject the products referred to in paragraph 1 to taxation without having to respect the minimum levels of taxation laid down in this Directive. In such case, the taxation of those products shall replicate the ranking between the minimum levels of taxation as laid down in Annex I and shall not be taken into account for the purposes of satisfying the minimum level of taxation on electricity laid down in Article 10.

Directive 2003/96/EC**Proposal***Article 14*

~~1. In addition to the general provisions set out in Directive 92/12/EEC on exempt uses of taxable products, and without prejudice to other Community provisions, Member States shall exempt the following from taxation under conditions which they shall lay down for the purpose of ensuring the correct and straightforward application of such exemptions and of preventing any evasion, avoidance or abuse:~~

~~(a) energy products and electricity used to produce electricity and electricity used to maintain the ability to produce electricity. However, Member States may, for reasons of environmental policy, subject these products to taxation without having to respect the minimum levels of taxation laid down in this Directive. In such case, the taxation of these products shall not be taken into account for the purpose of satisfying the minimum level of taxation on electricity laid down in Article 10;~~

~~(b) energy products supplied for use as fuel for the purpose of air navigation other than in private pleasure flying.~~

~~For the purposes of this Directive 'private pleasure flying' shall mean the use of an aircraft by its owner or the natural or legal person who enjoys its use either through hire or through any other means, for other than commercial purposes and in particular other than for the carriage of passengers or goods or for the supply of services for consideration or for the purposes of public authorities.~~

~~Member States may limit the scope of this exemption to supplies of jet fuel (CN code 2710 19 21);~~

~~(c) 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.~~

~~For the purposes of this Directive 'private pleasure craft' shall mean any craft used by its~~

Directive 2003/96/EC

~~owner or the natural or legal person who enjoys its use either through hire or through any other means, for other than commercial purposes and in particular other than for the carriage of passengers or goods or for the supply of services for consideration or for the purposes of public authorities.~~

~~2. Member States may limit the scope of the exemptions provided for in paragraph 1(b) and (c) to international and intra-Community transport. In addition, where a Member State has entered into a bilateral agreement with another Member State, it may also waive the exemptions provided for in paragraph 1(b) and (c). In such cases, Member States may apply a level of taxation below the minimum level set out in this Directive.~~

Proposal*Article 14*

1. Without prejudice to international obligations and to Article 5 of this Directive, as applicable as a single use to intra-EU air navigation of flights other than business and pleasure flights, Member states shall apply under fiscal control not less than the minimum levels of taxation prescribed in this Directive to energy products supplied for use as fuel to aircrafts, and to electricity used directly for charging electric aircrafts, for the purposes of intra-EU air navigation of those flights.

For the purposes of the first subparagraph, electricity shall be ranked among motor fuels indicated in Table A of Annex I.

The minimum levels of taxation referred to in the first subparagraph shall start from zero and increase each year by one tenth of the final minimum rates, set out in Tables A and D of Annex I, over a transitional period of ten years. A minimum rate of zero shall apply to sustainable biofuels and biogas, low-carbon fuels, renewable fuels of non-biological origin, advanced sustainable biofuels and biogas, and electricity over that transitional period of ten years.

Directive 2003/96/EC**Proposal**

For the purposes of this Article, 'intra-EU air navigation' shall mean flights between two airports located in the Union, including domestic flights.

For the purposes of this Article, 'business aviation' shall mean the operation or use of aircraft by companies or individuals for the carriage of passengers or goods as an aid to the conduct of their business, flown for purposes generally considered not for public hire and piloted by individuals having, at the minimum, a valid commercial pilot license with an instrument rating.

For the purposes of this Article, 'pleasure flights' shall mean the use of an aircraft for personal or recreational purposes not associated with a business or professional use.

2. Energy products supplied for use as fuel to aircrafts and electricity used directly for charging electric aircrafts, for the purposes of intra-EU air navigation of cargo-only flights shall be exempted.

By derogation from the first subparagraph of this paragraph, Member states may apply the same level of taxation laid down in paragraph 1 to cargo-only domestic flights referred to in the first subparagraph of this paragraph.

Where a Member State has entered into an agreement with one or several Member States, it may also apply the same level of taxation laid down in paragraph 1 to intra-EU air navigation of cargo-only flights mentioned in the first subparagraph.

For the purposes of this paragraph, 'cargo-only flight' shall mean a scheduled or non-scheduled air service performed by aircraft carrying revenue loads other than revenue passengers, excluding flights carrying one or more revenue passengers and flights listed in published timetables as open to passengers.

3. Without prejudice to international obligations, Member States may exempt or apply the same levels of taxation applied for intra-EU air

Directive 2003/96/EC**Proposal**

navigation to extra-EU air navigation according to the type of flight.

4. Motor fuels used in the field of the manufacture, development, testing and maintenance of aircraft shall be subject to the level of taxation provided for in paragraph 1.

5. Member States may apply under fiscal control total or partial exemptions to electricity supplied to stationary aircrafts.

For the purposes of the first subparagraph, 'electricity supply to stationary aircraft' shall mean the supply of electricity through a standardised fixed or mobile interface to aircraft when stationed at the gate or at an airport out-field position.

Article 15

1. Without prejudice to Article 5, Member states shall apply, as a single use, under fiscal control not less than minimum levels of taxation as set out in Tables B and D of Annex I to energy products supplied for use as fuel to vessels, and to electricity used directly for charging electric vessels, for the purposes of intra-EU waterborne regular service navigation, fishing and freight transport.

For the purposes of the first subparagraph, electricity shall be ranked among motor fuels indicated in Table B of Annex I.

Over a transitional period of ten years, minimum rates of zero shall apply to sustainable biofuels and biogas, low-carbon-fuels, renewable fuels of non-biological origin, advanced sustainable biofuels and biogas and electricity.

For the purposes of this Article, 'intra-EU waterborne navigation' shall mean navigation between two ports located in the Union, including domestic navigation.

For the purposes of this Article, 'regular service' shall mean a series of ro-ro passenger ship or high-speed passenger craft crossings operated so as to serve traffic between the same two or more ports, or a series of voyages from and

Directive 2003/96/EC**Proposal**

to the same port without intermediate calls, either: according to a published timetable or with crossings so regular or frequent that they constitute a recognisable systematic series.

For the purposes of this Article, 'freight transport' shall mean a scheduled or non-scheduled service performed by vessel carrying revenue loads other than revenue passengers, excluding voyages carrying one or more revenue passengers and voyages listed in published timetables as open to passengers.

2. Member states may exempt or apply the same levels of taxation applied for intra-EU waterborne navigation to extra-EU waterborne navigation according to the type of activity.

3. Member States shall subject to taxation laid down in the first paragraph motor fuels and electricity used in the field of the manufacture, development, testing and maintenance of vessels, and motor fuels and electricity used for dredging operations in navigable waterways and in ports.

4. Electricity produced on board a vessel shall be exempted from taxation.

5. Member States may apply under fiscal control total or partial exemptions to electricity directly supplied to vessels berthed in ports.

Article 15

1. Without prejudice to other **Community** provisions, Member States may apply under fiscal control **total or partial** exemptions or reductions in the level of taxation to:

(a) taxable products used under fiscal control in the field of pilot projects for the technological development of more environmentally-friendly products or in relation to fuels from renewable resources;

(b) electricity:

— of solar, wind, wave, tidal or geothermal origin;

Article 16

1. Without prejudice to other **Union** provisions, Member States may apply under fiscal control total or partial exemptions or reductions in the level of taxation to:

(a) taxable products used under fiscal control in the field of pilot projects for the technological development of more environmentally-friendly products or in relation to fuels from renewable resources;

(b) electricity:

— of solar, wind, wave, tidal or geothermal origin;

Directive 2003/96/EC

- of hydraulic origin produced in hydroelectric installations;
- generated from biomass or from products produced from biomass;
- generated from methane emitted by abandoned coalmines;
- generated from fuel cells;

~~(e) energy products and electricity used for combined heat and power generation;~~

~~(d) electricity produced from combined heat and power generation, provided that the combined generators are environmentally friendly. Member States may apply national definitions of 'environmentally friendly' (or high efficiency) cogeneration production until the Council, on the basis of a report and a proposal from the Commission, unanimously adopts a common definition;~~

~~(e) energy products and electricity used for the carriage of goods and passengers by rail, metro, tram and trolley bus;~~

~~(f) energy products supplied for use as fuel for navigation on inland waterways (including fishing) other than in private pleasure craft, and electricity produced on board a craft;~~

~~(g) 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 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.~~

Proposal

- of hydraulic origin produced in hydroelectric installations;
- generated from **sustainable** biomass or from products produced from **sustainable** biomass;
- generated from methane emitted by abandoned coalmines;
- generated from fuel cells;

Member States may also refund to the producer some or all of the amount of tax paid by the consumer on electricity produced from products specified in this paragraph.

(c) electricity produced from combined heat and power generation, provided that cogeneration by the combined generators is high-efficiency cogeneration as defined in Article 2, point (34), of Directive 2012/27/EU.

(d) renewable fuels of non-biological origin, advanced sustainable biofuels, bioliquids, biogas and advanced sustainable products falling within CN codes 4401 and 4402;

(e) products falling within CN code 2705 used for heating purposes.

Directive 2003/96/EC**Proposal**

~~The United Kingdom of Great Britain and Northern Ireland may apply the total or partial exemptions or reductions for natural gas separately for Northern Ireland;~~

~~(h) electricity, natural gas, coal and solid fuels used by households and/or by organisations recognised as charitable by the Member State concerned. In the case of such charitable organisations, Member States may confine the exemption or reduction to use for the purpose of non-business activities. Where mixed use takes place, taxation shall apply in proportion to each type of use. If a use is insignificant, it may be treated as nil;~~

~~(i) natural gas and LPG used as propellants;~~

~~(j) motor fuels used in the field of the manufacture, development, testing and maintenance of aircraft and ships;~~

~~(k) motor fuels used for dredging operations in navigable waterways and in ports;~~

~~(l) products falling within CN code 2705 used for heating purposes.~~

~~2. Member States may also refund to the producer some or all of the amount of tax paid by the consumer on electricity produced from products specified in paragraph 1(b).~~

~~3. Member States may apply a level of taxation down to zero to energy products and electricity used for agricultural, horticultural or piscicultural works, and in forestry.~~

~~On the basis of a proposal from the Commission, the Council shall before 1 January 2008 examine if the possibility of applying a level of taxation down to zero shall be repealed.~~

Article 16

~~1. Member States may, without prejudice to paragraph 5, apply an exemption or a reduced rate of taxation under fiscal control on the taxable products referred to in Article 2 where such products are made up of, or contain, one or more of the following products:~~

Directive 2003/96/EC**Proposal**

~~— products falling within CN codes 1507 to 1518;~~

~~— products falling within CN codes 3824 99 55 and 3824 99 80, 3824 99 85, 3824 99 86, 3824 99 92 (excluding anti-rust preparations containing amines as active constituents and inorganic composite solvents and thinners for varnishes and similar products), 3824 99 93, 3824 99 96 (excluding anti-rust preparations containing amines as active constituents and inorganic composite solvents and thinners for varnishes and similar products), 3826 00 10 and 3826 00 90 for their components produced from biomass;~~

~~— products falling within CN codes 2207 20 00 and 2905 11 00 which are not of synthetic origin;~~

~~— products produced from biomass, including products falling within CN codes 4401 and 4402.~~

~~Member States may also apply a reduced rate of taxation under fiscal control on the taxable products referred to in Article 2 where such products contain water (CN codes 2201 and 2853 90 10).~~

~~‘Biomass’ shall mean the biodegradable fraction of products, waste and residues from agriculture (including vegetal and animal substances), forestry and related industries, as well as the biodegradable fraction of industrial and municipal waste.~~

~~2. The exemption or reduction in taxation resulting from the application of the reduced rate laid down in paragraph 1 may not be greater than the amount of taxation payable on the volume of the products referred to in paragraph 1 present in the products eligible for the reduction.~~

~~The levels of taxation applied by Member States on the products made up of or containing the products referred to in paragraph 1 may be lower than the minimum levels specified in Article 4.~~

Directive 2003/96/EC**Proposal**

~~3. The exemption or reduction in taxation applied by Member States shall be adjusted to take account of changes in raw material prices to avoid over-compensating for the extra costs involved in the manufacture of the products referred to in paragraph 1.~~

~~4. Until 31 December 2003, Member States may exempt or continue to exempt products solely or almost solely made up of the products referred to in paragraph 1.~~

~~5. The exemption or reduction provided for the products referred to in paragraph 1 may be granted under a multiannual programme by means of an authorisation issued by an administrative authority to an economic operator for more than one calendar year. The exemption or reduction authorised may not be applied for a period of more than six consecutive years. This period may be renewed.~~

~~As part of a multiannual programme authorised by an administrative authority prior to 31 December 2012, Member States may apply the exemption or reduction under paragraph 1 after 31 December 2012 and until the end of the multiannual programme. The period may not be renewed.~~

~~6. Should Member States be required by Community law to comply with legally binding obligations to place on their markets a minimum proportion of the products referred to in paragraph 1, paragraphs 1 to 5 shall cease to apply as from the date when such obligations become binding on the Member States.~~

~~7. Member States shall communicate to the Commission the schedule of tax reductions or exemptions applied in accordance with this Article by 31 December 2004 and every 12 months thereafter.~~

~~8. No later than 31 December 2009, the Commission shall report to the Council on the fiscal, economic, agricultural, energy, industrial and environmental aspects of the reductions granted in accordance with this Article.~~

Directive 2003/96/EC**Proposal***Article 17*

Without prejudice to Article 5, as applicable as single uses, Member States may apply under fiscal control:

(a) reductions in the level of taxation, which shall not go below the minima as set out in Table C and D of Annex I, to energy products and electricity used for combined heat and power generation, without prejudice to Article 13;

(b) reductions in the level of taxation, which shall not go below the minima as set out in Table B and D of Annex I, to energy products and electricity used for the carriage of goods and passengers by rail, metro, tram and trolley bus, and for local public passenger transport, waste collection, armed forces and public administration, disabled people and ambulances;

For the purposes of point (b), electricity shall be ranked among motor fuels indicated in Annex I Table B;

(c) reductions in the level of taxation, which shall not go below the minima as set out in Table C and D of Annex I, to energy products used as heating fuel and electricity if used by households and/or by organisations recognised as charitable by the Member State concerned.

In the case of such charitable organisations, Member States shall confine the reduction to use for the purpose of non-business activities. Where mixed use takes place, taxation shall apply in proportion to each type of use. If a use is insignificant, it may be treated as nil.

For the purposes of point (c), the minimum levels of taxation as set out in Tables C and D of Annex I shall start from zero and increase over a transitional period of ten years by one tenth of the final minimum rates in each year.

For the purposes of point (c), energy products and electricity used by households recognised as vulnerable may be exempt for a maximum period of ten years after the entry into force of this Directive. For the purposes of this paragraph, 'vulnerable households' shall mean

Directive 2003/96/EC**Proposal**

households significantly affected by the impacts of this Directive which, for the purpose of this Directive, means that they are below the ‘at risk of poverty’” threshold, defined as 60% of the national median equivalised disposable income.

(d) reductions in the level of taxation, which shall not go below the minima as set out in Table C and D of Annex I to energy products used for heating purposes and to electricity, used for agricultural, horticultural or aquaculture works, and in forestry.

*Article 17**Article 18*

1. ~~Provided the minimum levels of taxation prescribed in this Directive are respected on average for each business,~~ Member States may apply tax reductions on the consumption of energy products used for heating purposes or for the purposes of Article 8(2)(b) and (c) and on electricity in the following cases:

Without prejudice to Article 5, as applicable as a single use, Member States may apply tax reductions, which shall not go below the relevant minima as set out in Tables B, C and D of Annex I on the consumption of energy products used for heating purposes or for the purposes of Article 8(2), points (b) and (c), and on electricity in the following cases:

(a) in favour of energy-intensive business

(a) in favour of energy-intensive business

An ‘energy-intensive business’ shall mean a business entity, as referred to in Article 11, where either the purchases of energy products and electricity amount to at least 3,0 % of the production value or the national energy tax payable amounts to at least 0,5 % of the added value. ~~Within this definition, Member States may apply more restrictive concepts, including sales value, process and sector definitions.~~

An ‘energy-intensive business’ shall mean a business entity, as referred to in Article 11, where either the purchases of energy products and electricity amount to at least 3,0 % of the production value or the national energy tax payable amounts to at least 0,5 % of the added value.

‘Purchases of energy products and electricity’ shall mean the actual cost of energy purchased or generated within the business. Only electricity, heat and energy products that are used for heating purposes or for the purposes of Article 8(2)(b) and (c) are included. All taxes are included, except deductible VAT.

‘Production value’ shall mean turnover, including subsidies directly linked to the price of the product, plus or minus the changes in stocks of finished products, work in progress and goods and services purchased for resale, minus the purchases of goods and services for resale.

‘~~Value added~~’ shall mean the total turnover liable to VAT including export sales minus the total purchases liable to VAT including imports.

‘**Added value**’ shall mean the total turnover liable to VAT including export sales minus the total purchases liable to VAT including imports.

~~Member States, which currently apply national energy tax systems in which energy intensive~~

Directive 2003/96/EC**Proposal**

~~businesses are defined according to criteria other than energy costs in comparison with production value and national energy tax payable in comparison with value added, shall be allowed a transitional period until no later than 1 January 2007 to adapt to the definition set out in point (a) first subparagraph;~~

(b) where agreements are concluded with ~~undertakings~~ or associations of ~~undertakings~~, or where tradable permit schemes or equivalent ~~arrangements~~ are implemented, as far as they lead to the achievement of environmental protection objectives or to improvements in energy efficiency.

(b) where agreements are concluded with **business entities as referred to in Article 19** or associations of **such business entities**, or where tradable permit schemes or equivalent **measures** are implemented, as far as they lead to the achievement of environmental protection objectives or to improvements in energy efficiency.

For the purposes of the first paragraph, 'tradable permit schemes' shall mean tradable permit schemes other than the Union scheme within the meaning of Directive 2003/87/EC of the European Parliament and of the Council 49.

~~2. Notwithstanding Article 4(1), Member States may apply a level of taxation down to zero to energy products and electricity as defined in Article 2, when used by energy intensive businesses as defined in paragraph 1 of this Article.~~

~~3. Notwithstanding Article 4(1), Member States may apply a level of taxation down to 50 % of the minimum levels in this Directive to energy products and electricity as defined in Article 2, when used by business entities as defined in Article 11, which are not energy intensive as defined in paragraph 1 of this Article.~~

~~4. Businesses that benefit from the possibilities referred to in paragraphs 2 and 3 shall enter into the agreements, tradable permit schemes or equivalent arrangements as referred to in paragraph 1(b). The agreements, tradable permit schemes or equivalent arrangements must lead to the achievement of environmental objectives or increased energy efficiency, broadly equivalent to what would have been achieved if the standard Community minimum rates had been observed.~~

Directive 2003/96/EC**Proposal***Article 18*

~~1. 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.~~

~~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 II.~~

~~2. Notwithstanding the periods set out in paragraphs 3 to 13 and provided that this does not significantly distort competition, Member States with difficulties in implementing the new minimum levels of taxation will be allowed a transitional period of until 1 January 2007, particularly in order to avoid jeopardising price stability.~~

~~3. The Kingdom of Spain may apply a transitional period until 1 January 2007 to adjust its national level of taxation on gas oil used as propellant to the new minimum level of EUR 302 and until 1 January 2012 to reach EUR 330. Until 31 December 2009, it may furthermore apply a special reduced rate on commercial use of gas oil used as propellant, provided that this does not result in taxation at below EUR 287 per 1 000 l and that the national levels of taxation in force on 1 January 2003 are not reduced. From 1 January 2010 until 1 January 2012, it may apply a differentiated rate on commercial use of gas oil used as propellant, provided that it does not result in taxation at below EUR 302 per 1 000 l and that the national levels of taxation in force on 1 January 2010 are not reduced. The special reduced rate on commercial use of gas oil used as propellant may also be applied for taxis until 1 January 2012. With respect to Article 7(3)(a), it may apply, until 1 January 2008, a maximum permissible gross laden weight of not less than 3,5 tonnes in the definition of commercial purposes.~~

Directive 2003/96/EC**Proposal**

~~4. The Republic of Austria may apply a transitional period until 1 January 2007 to adjust its national level of taxation on gas oil used as propellant to the new minimum level of EUR 302 and until 1 January 2012 to reach EUR 330. Until 31 December 2009, it may furthermore apply a special reduced rate on commercial use of gas oil used as propellant, provided that this does not result in taxation at below EUR 287 per 1 000 l and that the national levels of taxation in force on 1 January 2003 are not reduced. From 1 January 2010 until 1 January 2012, it may apply a differentiated rate on commercial use of gas oil used as propellant, provided that it does not result in taxation at below EUR 302 per 1 000 l and that the national levels of taxation in force on 1 January 2010 are not reduced.~~

~~5. The Kingdom of Belgium may apply a transitional period until 1 January 2007 to adjust its national level of taxation on gas oil used as propellant to the new minimum level of EUR 302 and until 1 January 2012 to reach EUR 330. Until 31 December 2009, it may furthermore apply a special reduced rate on commercial use of gas oil used as propellant, provided that this does not result in taxation at below EUR 287 per 1 000 l and that the national levels of taxation in force on 1 January 2003 are not reduced. From 1 January 2010 until 1 January 2012, it may apply a differentiated rate on commercial use of gas oil used as propellant, provided that it does not result in taxation at below EUR 302 per 1 000 l and that the national levels of taxation in force on 1 January 2010 are not reduced.~~

~~6. The Grand Duchy of Luxembourg may apply a transitional period until 1 January 2009 to adjust its national level of taxation on gas oil used as propellant to the new minimum level of EUR 302 and until 1 January 2012 to reach EUR 330. Until 31 December 2009, it may furthermore apply a special reduced rate on commercial use of gas oil used as propellant, provided that this does not result in taxation at below EUR 272 per 1 000 l and that the national levels of taxation in force on 1 January 2003 are not reduced.~~

Directive 2003/96/EC**Proposal**

~~From 1 January 2010 until 1 January 2012, it may apply a differentiated rate on commercial use of gas oil used as propellant, provided that this does not result in taxation at below EUR 302 per 1 000 l and that the national levels of taxation in force on 1 January 2010 are not reduced.~~

~~7. The Portuguese Republic may apply levels of taxation on energy products and electricity consumed in the Autonomous Regions of the Azores and Madeira lower than the minimum levels of taxation laid down in this Directive in order to compensate for the transport costs incurred as a result of the insular and dispersed nature of these regions.~~

~~The Portuguese Republic may apply a transitional period until 1 January 2009 to adjust its national level of taxation on gas oil used as propellant to the new minimum level of EUR 302 and until 1 January 2012 to reach EUR 330. Until 31 December 2009, it may furthermore apply a differentiated rate on commercial use of gas oil used as propellant, provided that this does not result in taxation at below EUR 272 per 1 000 l and that the national levels of taxation in force on 1 January 2003 are not reduced. From 1 January 2010 until 1 January 2012, it may apply a differentiated rate on commercial use of gas oil used as propellant, provided that this does not result in taxation at below EUR 302 per 1000 l and that the national levels of taxation in force on 1 January 2010 are not reduced. The differentiated rate on commercial use of gas oil used as propellant may also be applied for taxis until 1 January 2012. With respect to Article 7(3)(a) it may apply, until 1 January 2008, a maximum permissible gross laden weight of not less than 3,5 tonnes in the definition of commercial purposes.~~

~~The Portuguese Republic may apply total or partial exemptions in the level of taxation of electricity until 1 January 2010.~~

~~8. The Hellenic Republic may apply levels of taxation up to EUR 22 per 1 000 l lower than the minimum rates laid down in this Directive~~

Directive 2003/96/EC**Proposal**

~~on gas oil used as propellant and on petrol consumed in the departments of Lesbos, Chios, Samos, the Dodecanese and the Cyclades and on the following islands in the Aegean: Thasos, North Sporades, Samothrace and Skiros.~~

~~The Hellenic Republic may apply a transitional period until 1 January 2010 to convert its current input electricity taxation system into an output taxation system and to reach the new minimum level of taxation for petrol.~~

~~The Hellenic Republic 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 302 per 1 000 l and until 1 January 2012 to reach EUR 330. Until 31 December 2009 it may furthermore apply a differentiated rate on commercial use of gas oil used as propellant, provided that this does not result in taxation at below EUR 264 per 1 000 l and that the national levels of taxation in force on 1 January 2003 are not reduced. From 1 January 2010 until 1 January 2012, it may apply a differentiated rate on commercial use of gas oil used as propellant, provided that this does not result in taxation at below EUR 302 per 1 000 l and that the national levels of taxation in force on 1 January 2010 are not reduced. The differentiated rate on commercial use of gas oil used as propellant may also be applied for taxis until 1 January 2012. With respect to Article 7(3)(a) it may apply, until 1 January 2008, a maximum permissible gross laden weight of not less than 3,5 tonnes in the definition of commercial purposes.~~

~~9. Ireland may apply total or partial exemptions or reductions in the level of taxation of electricity until 1 January 2008.~~

~~10. The French Republic may apply total or partial exemptions or reductions for energy products and electricity used by the State, regional and local government authorities or other bodies governed by public law, in respect of the activities or transactions in which they engage as public authorities until 1 January 2009.~~

Directive 2003/96/EC**Proposal**

~~The French Republic may apply a transitional period until 1 January 2009 to adapt its current electricity taxation system to the provisions set out in this Directive. During this period, the global average level of the current local electricity taxation is to be taken into account to assess whether the minimum rates set out in this Directive are respected.~~

~~11. The Italian Republic may apply, until 1 January 2008, a maximum permissible gross laden weight of not less than 3,5 tonnes in the definition of commercial purposes as given in Article 7(3)(a).~~

~~12. The Federal Republic of Germany may apply, until 1 January 2008, a maximum permissible gross laden weight of 12 tonnes in the definition of commercial purposes as given in Article 7(3)(a).~~

~~13. The Kingdom of the Netherlands may apply, until 1 January 2008, a maximum permissible gross laden weight of 12 tonnes in the definition of commercial purposes as given in Article 7(3)(a).~~

~~14. Within the transitional periods established, Member States shall progressively reduce their respective gaps with respect to the new minimum levels of taxation. However, when 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.~~

Article 19

1. For the purposes of Article 18, 'business entity' shall mean an entity, identified in accordance with paragraph 2 of this Article, which independently carries out, in any place, the supply of goods and services, whatever is the purpose or results of such economic activities.

Directive 2003/96/EC**Proposal**

The economic activities comprise all activities of producers, traders and persons supplying services including mining and agricultural activities and activities of the professions.

States, regional and local government authorities and other bodies governed by public law shall not be considered as business entities in respect of the activities or transactions in which they engage as public authorities. However, when they engage in such activities or transactions, they shall be considered as a business entities in respect of those activities or transactions where treatment as non-business entities would lead to significant distortions of competition.

2. For the purposes of paragraph 1, the business entity cannot be considered as smaller than a part of an enterprise or a legal body that from an organisational point of view constitutes an independent business, that is to say an entity capable of functioning by its own means.

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, solid fuels and natural gas until 1 January 2008.~~

Directive 2003/96/EC**Proposal**

~~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 1 000 l. However, the level of taxation on gas oil used as propellant shall be no less than EUR 245 per 1 000 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 1 000 l. However, the level of taxation on unleaded petrol shall be no less than EUR 287 per 1 000 l as from 1 May 2004.~~

~~The Republic of Estonia may apply a total exemption from 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.~~

~~The Republic of Estonia may apply a transitional period until 1 January 2010 to convert its current input electricity taxation system into an output electricity 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 1 000 l and until 1 January 2013 to reach EUR 330 . However, the level of taxation on gas oil and kerosene shall be no less than EUR 245 per 1 000 l as from 1 May 2004 and no less than EUR 274 per 1 000 l as from 1 January 2008.~~

~~The Republic of Latvia may apply a transitional period until 1 January 2011 to adjust its national~~

Directive 2003/96/EC**Proposal**

~~level of taxation on unleaded petrol used as propellant to the new minimum level of EUR 359 per 1 000 l. However, the level of taxation on unleaded petrol cannot be less than EUR 287 per 1 000 l as from 1 May 2004 and no less than EUR 323 per 1 000 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.~~

~~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 no 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 no 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 1 000 l and until 1 January 2013 to reach EUR 330 . However, the level of taxation on gas oil and kerosene shall be no less than EUR 245 per 1 000 l as from 1 May 2004 and no less than EUR 274 per 1 000 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 1 000 l. However, the level of taxation on unleaded petrol shall be no less than EUR 287 per 1 000 l as from 1 May 2004 and no less than EUR 323 per 1 000 l as from 1 January 2008.~~

Directive 2003/96/EC**Proposal**

~~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.~~

~~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 no 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 1 000 l. However, the levels of taxation on gas oil and kerosene used as propellant shall be no less than EUR 245 per 1 000 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 no less than EUR 287 per 1 000 l and EUR 337 per 1 000 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 fuel to the relevant minimum levels of taxation. However, the effective tax rates applied to natural gas shall be no 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 fuel to the relevant minimum levels of taxation. However, the effective tax rates applied to the energy products~~

Directive 2003/96/EC**Proposal**

~~concerned shall be no 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 1 000 l. However, the level of taxation on unleaded petrol shall be no less than EUR 287 per 1 000 l 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 gas oil used as propellant to the new minimum level of EUR 302 per 1 000 l and until 1 January 2012 to reach EUR 330. However, the level of taxation on gas oil shall be no less than EUR 245 per 1 000 l as from 1 May 2004 and no less than EUR 274 per 1 000 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 1 000 kg. However, the level of taxation on heavy fuel oil shall be no less than EUR 13 per 1 000 kg as from 1 May 2004.~~

~~The Republic of Poland may apply a transitional period until 1 January 2012 to adjust its national level of taxation on coal and coke used for district heating to the relevant minimum level of taxation.~~

~~The Republic of Poland may apply a transitional period until 1 January 2012 to adjust its national level of taxation on coal and coke used for heating purposes other than district heating to the relevant minimum levels of taxation.~~

~~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.~~

Directive 2003/96/EC**Proposal**

~~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 from 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 no 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 no 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 regard 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.~~

Article 18b

Directive 2003/96/EC**Proposal**

~~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 1 000 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 1 000 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 1 000 l. However, the level of taxation on unleaded petrol shall be not less than EUR 287 per 1 000 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.~~

*Article 19**Article 20*

1. In addition to the provisions set out in the previous Articles, in particular in Articles ~~5, 15 and 17~~, the Council, acting unanimously on a proposal from the Commission, may ~~authorise~~ any Member State to introduce further exemptions or reductions for specific policy considerations.

1. In addition to the provisions set out in the previous Articles, in particular in Articles ~~14, 14, 16, 17 and 18~~, the Council, acting unanimously on a proposal from the Commission, may ~~adopt implementing acts, authorising~~ any Member State to introduce further exemptions or reductions for specific policy considerations. ~~Where it is necessary, for reasons of protection of environment and human health, including the reduction of air pollution, the Council, acting~~

Directive 2003/96/EC**Proposal**

A Member State wishing to introduce **such a** measure shall inform the Commission accordingly and shall also provide the Commission with all relevant and necessary information.

The Commission shall examine the request, taking into account, inter alia, the proper functioning of the internal market, the need to ensure fair competition and **Community** health, environment, energy and transport policies.

Within three months of receiving all relevant and necessary information, the Commission shall either present a proposal for the authorisation of such a measure by the Council or, alternatively, shall inform the Council of the reasons why it has not proposed the authorisation of such a measure.

2. The authorisations referred to in paragraph 1 shall be granted for a maximum period of 6 years, with the possibility of renewal in accordance with the procedure set out in paragraph 1.

3. If the Commission considers that the **exemptions or reductions** provided for in paragraph 1 are no longer sustainable, particularly in terms of fair competition or distortion of the operation of the internal market, or in terms of **Community** policy in the areas of health, protection of the environment, energy and transport, it shall submit appropriate proposals to the Council. The Council shall take a unanimous decision on these proposals.

Article 20

1. Only the following energy products shall be subject to the control and movement provisions of **Directive 92/12/EEC**:

(a) products falling within CN codes 1507 to 1518 , if these are intended for use as heating fuel or motor fuel;

unanimously on a proposal from the Commission, may adopt implementing acts, authorising any Member State to introduce specific increased rates derogating from the ranking between the minimum levels of taxation as laid down in Annex I.

A Member State wishing to introduce **those** measures shall inform the Commission accordingly and shall also provide the Commission with all relevant and necessary information.

The Commission shall examine the request, taking into account, inter alia, the proper functioning of the internal market, the need to ensure fair competition and **Union** health, environment, energy and transport policies.

3. If the Commission considers that the **measures** provided for in paragraph 1 are no longer sustainable, particularly in terms of fair competition or distortion of the operation of the internal market, or in terms of **Union** policy in the areas of health, protection of the environment, energy and transport, it shall submit appropriate proposals to the Council. The Council shall take a unanimous decision on these proposals.

Article 21

1. Only the following energy products shall be subject to the control and movement provisions of **Directive 2008/118/EC**:

(a) products falling within CN codes 1507 to 1518 , if these are intended for use as heating fuel or motor fuel;

(b) products falling within CN codes 2207, 2208 90 91 and 2208 90 99 if these are intended for use as heating fuel or motor fuel and are exempted from the harmonized excise duty on alcohol and alcoholic beverages in accordance

Directive 2003/96/EC

(b) products falling within CN codes 2707 10 , 2707 20 , 2707 30 and 2707 50 ;

(e) products falling within CN codes 2710 12 to 2710 19 68 and 2710 20 to 2710 20 39 and 2710 20 90 (only for products of which less than 90 % by volume (including losses) distils at 210 °C and 65 % or more by volume (including losses) distils at 250 °C by the ISO 3405 method (equivalent to the ASTM D 86 method)). However, for products falling within CN codes 2710 12 21, M3 2710 12 25 and 2710 19 29 and 2710 20 90 (only for products of which less than 90 % by volume (including losses) distils at 210 °C and 65 % or more by volume (including losses) distils at 250 °C by the ISO 3405 method (equivalent to the ASTM D 86 method)), the control and movement provisions shall only apply to bulk commercial movements;

(d) products falling within CN codes 2711 (except 2711 11 , 2711 21 and 2711 29) ;

(e) products falling within CN code 2901 10 ;

(f) products falling within CN codes 2902 20 , 2902 30 , 2902 41 , 2902 42 , 2902 43 and 2902 44 ;

(g) products falling within CN code 2905 11 00 , which are not of synthetic origin, if these are intended for use as heating fuel or motor fuel;

Proposal

with Article 27(1)(a) or (b) of Directive 92/83/EC;

(c) products falling within CN codes 2707 10 , 2707 20 , 2707 30 and 2707 50 ;

(d) products falling within CN codes 2710 12 to 2710 19 68 and 2710 19 71 to 2710 19 99 and 2710 20 to 2710 20 39 and 2710 20 90 (only for products of which less than 90 % by volume (including losses) distils at 210 °C and 65 % or more by volume (including losses) distils at 250 °C by the ISO 3405 method (equivalent to the ASTM D 86 method)). However, for products falling within CN codes 2710 12 21, M3 2710 12 25 and 2710 19 29 and 2710 20 90 (only for products of which less than 90 % by volume (including losses) distils at 210 °C and 65 % or more by volume (including losses) distils at 250 °C by the ISO 3405 method (equivalent to the ASTM D 86 method)), and 2710 19 71 to 2710 19 99, the control and movement provisions shall only apply to bulk commercial movements;

(e) products falling within CN codes 2711 (except 2711 11 , 2711 21 and 2711 29) ;

(f) products falling within CN code 2901 10 ;

(g) products falling within CN codes 2902 20 , 2902 30 , 2902 41 , 2902 42 , 2902 43 and 2902 44 ;

(h) products falling within CN code 2905 11 00 , which are not of synthetic origin, if these are intended for use as heating fuel or motor fuel;

(i) products falling within CN codes 2909 19 10 and 2909 19 90, the latter if intended for use as heating fuel or motor fuel;

(j) products falling within CN codes 3403. The control and movement provisions shall only apply to bulk commercial movements;

(k) products falling within CN codes 3811;

(l) products falling within CN codes 3814, if these are intended for use as heating fuel or motor fuel. The control and movement provisions

Directive 2003/96/EC

(h) products falling within CN codes 3824 99 86, 3824 99 92 (excluding anti-rust preparations containing amines as active constituents and inorganic composite solvents and thinners for varnishes and similar products), 3824 99 93 , 3824 99 96 (excluding anti-rust preparations containing amines as active constituents and inorganic composite solvents and thinners for varnishes and similar products), 3826 00 10 and 3826 00 90 if these are intended for use as heating fuel or motor fuel.

2. If a Member State finds that energy products other than those referred to in paragraph 1 are intended for use, offered for sale or used as heating fuel, motor fuel or are otherwise giving rise to evasion, avoidance or abuse, it shall advise the Commission forthwith. This provision shall also apply for electricity. The Commission shall transmit the communication to the other Member States within one month of receipt. ~~A Decision as to whether the products in question should be made subject to the control and movement provisions of Directive 92/12/EEC shall then be taken~~ in accordance with the procedure ~~laid down~~ in Article ~~27(2)~~.

Proposal

shall only apply to bulk commercial movements;

(m) products falling within CN codes 3823 19, if these are intended for use as heating fuel or motor fuel.

(n) products falling within CN codes 3824 99 86 , 3824 99 92 (excluding anti-rust preparations containing amines as active constituents and inorganic composite solvents and thinners for varnishes and similar products), 3824 99 93 , 3824 99 96 (excluding anti-rust preparations containing amines as active constituents and inorganic composite solvents and thinners for varnishes and similar products), 3826 00 10 and 3826 00 90 if these are intended for use as heating fuel or motor fuel;

For the purposes of paragraph 1, 'bulk commercial movement' shall mean unpackaged product transported in containers that are either an integral part of the means of transport (such as road tank, wagons, railway tank wagons, tanker vessels), or in ISO-tanks. The term shall also include unpackaged product transported in other containers exceeding 210 litres volume.

2. If a Member State finds that energy products other than those referred to in paragraph 1 are intended for use, offered for sale or used as heating fuel, motor fuel or are otherwise giving rise to evasion, avoidance or abuse, it shall advise the Commission forthwith. This provision shall also apply for electricity. The Commission shall transmit the communication to the other Member States within one month of receipt. ~~Within~~ two months of that communication, the Member States shall communicate to the Commission their views regarding the detected practice of evasion, avoidance or abuse concerning those energy products and electricity. Based on the views received from the Member States, and in case there is a risk for the proper functioning of the internal market or for the environment, the Commission shall adopt implementing acts to determine that the control and movement provisions of Directive 2008/118/EC are to apply to the products concerned. Those implementing

Directive 2003/96/EC

3. Member States may, pursuant to bilateral arrangements, dispense with some or all of the control measures set out in ~~Directive 92/12/EEC~~ in respect of some or all of the products referred to in paragraph 1, insofar as they are not covered by Articles 7 ~~to~~ 9 of this Directive. Such arrangements shall not affect Member States which are not party to them. All such bilateral arrangements shall be notified to the Commission, which shall inform the other Member States.

Article ~~21~~

1. In addition to the general provisions defining the chargeable event and the provisions for payment set out in ~~Directive 92/12/EEC~~, the amount of taxation on energy products shall also become due on the occurrence of one of the chargeable events mentioned in Article 2(3).

~~2. For the purpose of this Directive, the word 'production' in Article 4(c) and 5(1) of Directive 92/12/EEC shall be deemed to include 'extraction', when appropriate.~~

~~3. The consumption of energy products within the curtilage of an establishment producing energy products shall not be considered as a chargeable event giving rise to taxation, if the consumption consist of energy products produced within the curtilage of the establishment. Member States may also consider the consumption of electricity and other energy products not produced within the curtilage of such an establishment and the consumption of energy products and electricity within the curtilage of an establishment producing fuels to be used for generation of electricity as not giving rise to a chargeable event. Where the consumption is for purposes not related to the production of energy products and in particular for the propulsion of vehicles, this shall be considered a chargeable event, giving rise to taxation.~~

Proposal

acts shall be adopted in accordance with the examination procedure referred to in Article 28(2).

3. Member States may, pursuant to bilateral arrangements, dispense with some or all of the control measures set out in ~~Directive 2008/118/EC~~ in respect of some or all of the products referred to in paragraph 1 of this Article, insofar as they are not covered by Articles 7, 8 and 9 of this Directive. Such arrangements shall not affect Member States which are not party to them. All such bilateral arrangements shall be notified to the Commission, which shall inform the other Member States.

Article 22

1. In addition to the general provisions defining the chargeable event and the provisions for payment set out in ~~Directive 2008/118/EC~~, the amount of taxation on energy products shall also become due on the occurrence of one of the chargeable events mentioned in Article 2(3) of this Directive.

2. The consumption of energy products within the curtilage of an establishment producing energy products shall not be considered as a chargeable event giving rise to taxation, if the consumption consist of energy products produced within the curtilage of the establishment. Member States may also consider the consumption of electricity and other energy products not produced within the curtilage of such an establishment and the consumption of energy products and electricity within the curtilage of an establishment producing fuels to be used for generation of electricity as not giving rise to a chargeable event. Where the consumption is for purposes not related to the production of energy products and in particular for the propulsion of vehicles, this shall be considered a chargeable event, giving rise to taxation.

Directive 2003/96/EC

4. Member States may also provide that taxation on energy products and electricity shall become due when it is established that a final use condition laid down in national rules for the purpose of a reduced level of taxation or exemption is not, or is no longer, fulfilled.

5. For the purpose of applying Articles 5 and 6 of Directive 92/12/EEC, electricity and natural gas shall be subject to taxation and shall become chargeable at the time of supply by the distributor or redistributor. Where the delivery to consumption takes place in a Member State where the distributor or redistributor is not established, the tax of the Member States of delivery shall be chargeable to a company that has to be registered in the Member State of delivery. Tax shall in all cases be levied and collected according to procedures laid down by each Member State.

Notwithstanding the first subparagraph, Member States have the right to determine the chargeable event, in the case where there are no connections between their gas pipe lines and those of other Member States.

An entity producing electricity for its own use is regarded as a distributor. Notwithstanding Article 14(1)(a), Member States may exempt small producers of electricity provided that they tax the energy products used for the production of that electricity.

For the purpose of applying Articles 5 and 6 of Directive 92/12/EEC, coal, coke and lignite shall be subject to taxation and shall become chargeable at the time of delivery by companies, which have to be registered for that purpose by the relevant authorities. Those authorities may allow the producer, trader, importer or fiscal representative to substitute the registered company for the fiscal obligations imposed

Proposal

3. Member States may also provide that taxation on energy products and electricity shall become due when it is established that a final use condition laid down in national rules for the purpose of a reduced level of taxation or exemption is not, or is no longer, fulfilled.

4. For the purpose of applying Articles 2 and 7 of Directive 2008/118/EC, electricity, natural gas and hydrogen shall be subject to taxation and shall become chargeable at the time of supply by the distributor or redistributor. Where the delivery to consumption takes place in a Member State where the distributor or redistributor is not established, the tax of the Member States of delivery shall be chargeable to a company that has to be registered in the Member State of delivery. Tax shall in all cases be levied and collected according to procedures laid down by each Member State.

For the purposes of the first subparagraph, electricity storage facilities and transformers of electricity may be considered as redistributors when they supply electricity.

Notwithstanding the first subparagraph, Member States have the right to determine the chargeable event, in the case where there are no connections between their gas pipe lines and those of other Member States.

An entity producing electricity for its own use is regarded as a distributor. Notwithstanding Article 13, Member States may exempt small producers of electricity provided that they tax the energy products used for the production of that electricity.

For the purpose of applying Articles 2 and 7 of Directive 2008/118/EC, coal, coke, lignite and products falling within CN codes 2703, 4401 and 4402 shall be subject to taxation and shall become chargeable at the time of delivery by companies, which have to be registered for that purpose by the relevant authorities. Those authorities may allow the producer, trader, importer or fiscal representative to substitute the registered company for the fiscal obligations

Directive 2003/96/EC**Proposal**

upon it. Tax shall be levied and collected according to procedures laid down by each Member State.

imposed upon it. Tax shall be levied and collected according to procedures laid down by each Member State.

6. Member States need not treat as 'production of energy products':

5. Member States need not treat as 'production of energy products':

(a) operations during which small quantities of energy products are obtained incidentally;

(b) operations by which the user of an energy product makes its reuse possible in his own undertaking provided that the taxation already paid on such product is not less than the taxation which would be due if the reused energy product were again to be liable to taxation;

(c) an operation consisting of mixing, outside a production establishment or a tax warehouse, energy products with other energy products or other materials, provided that:

(i) taxation on the components has been paid previously; and

(ii) the amount paid is not less than the amount of the tax which would be chargeable on the mixture.

The condition under (i) shall not apply where the mixture is exempted for a specific use.

Article 22

Article 23

When taxation rates are changed, stocks of energy products already released for consumption may be subject to an increase in, or a reduction of, the tax.

Article 23

Article 24

Member States may refund the amounts of taxation already paid on contaminated or accidentally mixed energy products sent back to a tax warehouse for recycling.

Article 24

Article 25

1. Energy products released for consumption in a Member State, contained in the standard tanks of commercial motor vehicles and intended to be used as fuel by those same vehicles, as well as in special containers, and intended to be used for the operation, during the course of transport, of the systems equipping those same containers shall not be subject to taxation in any other Member State.

2. For the purposes of this Article,

2. For the purposes of this Article,

'standard tanks' shall mean:

'standard tanks' shall mean:

~~the tanks permanently fixed by the manufacturer to all motor vehicles of the same type as the vehicle in question~~ and whose permanent fitting enables fuel to be used directly, both the purpose of propulsion and, where appropriate, for the operation, during transport, of refrigeration systems and other systems. Gas tanks fitted to motor vehicles designed for the direct use of

(a) the tanks permanently fixed to a motor vehicle by the manufacturer or by a third party and which, according to the registration documents or the certificate of roadworthiness of the vehicle, comply with the applicable technical and security requirements, and whose permanent fitting enables fuel to be used directly, both for the purpose of propulsion and, where appropriate,

Directive 2003/96/EC

gas as a fuel and tanks fitted to the other systems with which the vehicle may be equipped shall also be considered to be standard tanks;

~~the tanks permanently fixed by the manufacturer to all containers of the same type as the container in question and~~ whose permanent fitting enables fuel to be used directly for the operation, during transport, of the refrigeration systems and other systems with which special containers are equipped.

'Special container' shall mean any container fitted with specially designed apparatus for refrigeration systems, oxygenation systems, thermal insulation systems or other systems.

Article 25

1. Member States shall inform the Commission of the levels of taxation which they apply to the products listed in Article 2 on 1 January each year and following each change in national law.
2. Where the levels of taxation applied by the Member States are expressed in units of measurement other than those specified for each product in Articles 7 to 10, Member States shall also notify the corresponding levels of taxation following conversion into these units.

Article 26

1. Member States shall inform the Commission of measures taken pursuant to Articles ~~5, 14(2), 15 and 17~~.
2. Measures such as tax exemptions, tax reductions, tax differentiation and tax refunds within the meaning of this Directive might constitute State aid and in those cases have to be notified to the Commission pursuant to Article ~~88~~(3) of the Treaty.

Proposal

for the operation, during transport, of refrigeration systems and other systems, including gas tanks fitted to motor vehicles designed for the direct use of gas as a fuel and tanks fitted to the other systems with which the vehicle may be equipped;

(b) the tanks permanently fixed to a special container by the manufacturer or a third party which, according to the registration documents of the container, comply with the applicable technical and security requirements, and whose permanent fitting enables fuel to be used directly for the operation, during transport, of the refrigeration systems and other systems with which special containers are equipped.

For the purposes of this Article, 'special container' shall mean any container fitted with specially designed apparatus for refrigeration systems, oxygenation systems, thermal insulation systems or other systems.

Article 26

1. Member States shall inform the Commission of the levels of taxation which they apply to the products listed in Article 2 on 1 January each year and following each change in national law as well as the related volumes.
2. Where the levels of taxation applied by the Member States are expressed in units of measurement other than that specified for each product in Articles 7 to 10, Member States shall also notify the corresponding levels of taxation following conversion into these units.

Article 27

1. Member States shall inform the Commission of measures taken pursuant to Articles 13 to 18.
2. Measures such as tax exemptions, tax reductions, tax differentiation and tax refunds within the meaning of this Directive might constitute State aid and in those cases have to be notified to the Commission pursuant to Article 108 (3)

Directive 2003/96/EC

Information provided to the Commission on the basis of this Directive does not free Member States from the notification obligation pursuant to Article 88(3) of the Treaty.

~~3. The obligation to inform the Commission pursuant to paragraph 1 of measures taken pursuant to Article 5 does not free Member States from any notification obligations pursuant to Directive 83/189/EEC.~~

Article 27

1. The Commission shall be assisted by the Committee on Excise Duties set up by Article 24(1) of Directive 92/12/EEC.

2. Where reference is made to this paragraph, Article 5 and 7 of Decision 1999/468/EC shall apply.

~~The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.~~

~~3. The Committee shall adopt its Rules of Procedure.~~

Proposal

of the Treaty on the Functioning of the European Union.

Information provided to the Commission on the basis of this Directive does not free Member States from the notification obligation pursuant to Article 108(3) of the Treaty on the Functioning of the European Union.

Article 28

1. The Commission shall be assisted by the Committee on Excise Duties set up by Article 43 of Directive 2008/118/EC. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) 182/2011 shall apply.

Article 29

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt the delegated acts referred to in Article 2(8) and Article 5(2) shall be conferred on the Commission for an indeterminate period of time from 1 January 2023.

3. The delegation of power referred to in Article 2(8) and Article 5(2) may be revoked at any time by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a

Directive 2003/96/EC**Proposal**

later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.

5. As soon as it adopts a delegated act, the Commission shall notify it to the Council.

6. A delegated act adopted pursuant to Article 2(8) and Article 5(2) shall enter into force only if no objection has been expressed by the Council within a period of two months of notification of that act to the Council or if, before the expiry of that period, the Council have informed the Commission that it will not object. That period shall be extended by two months at the initiative of the Council.

7. The European Parliament shall be informed of the adoption of delegated acts by the Commission, of any objection formulated to them, or of the revocation of the delegation of powers by the Council.

Article 28

1. Member States shall adopt and publish the laws, regulations and administrative provisions necessary to comply with this Directive not later than 31 December 2003. They shall forthwith inform the Commission thereof.

Article 30

1. Member States shall adopt and publish by [31 December 2022], the laws, regulations and administrative provisions necessary to comply with Article 1(2), Article 2(1), points (b) to (o), Article 2(3), second, third and fourth subparagraphs, Article 2(4) to (8), Article 3, Article 5, Article 7, Article 8(1), Article 9(1), Article 13, Articles 14 and 15, Article 16, point (b), last sentence, Article 16, point (c), (d) and (e), Article 17, Article 18, Article 19, Article 21(1), point (b), Article 21(1), point (d), Article 21(1), points (i) to (m), Article 21(1), second subparagraph, Article 21(2), Article 22 (1), Article 22(4), Article 25(2), Article 26(1), Article 28, Article 29, Article 30, Article 31 and Annex I. They shall immediately communicate the text of those measures to the Commission.

Directive 2003/96/EC**Proposal**

~~2. They shall apply these provisions from 1 January 2004, except the provisions laid down in Articles 16 and 18(1), which may be applied by the Member States from 1 January 2003.~~

They shall apply those measures from [1 January 2023].

~~3. When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by the Member States.~~

When Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. They shall also include a statement that references in existing laws, regulations and administrative provisions to the Directive(s) repealed by this Directive shall be construed as references to this Directive. Member States shall determine how such reference is to be made and how that statement is to be formulated.

~~4. Member States shall communicate to the Commission the texts of the main provisions of national law which they adopt in the field governed by this Directive.~~

2. Member States shall communicate to the Commission the texts of the main provisions of national law which they adopt in the field covered by this Directive.

Article 29

~~The Council, acting on the basis of a report and, where appropriate, a proposal from the Commission, shall periodically examine the exemptions and reductions and the minimum levels of taxation laid down in this Directive and, acting unanimously after consulting the European Parliament, shall adopt the necessary measures. The report by the Commission and the consideration by the Council shall take into account the proper functioning of the internal market, the real value of the minimum levels of taxation and the wider objectives of the Treaty.~~

Article 31

Every five years and for the first time five years after 1 January 2023, the Commission shall submit to the Council a report on the application of this Directive.

The report by the Commission shall, inter alia, examine the minimum levels of taxation, the impact of innovation and technological developments, in particular as regards energy efficiency, the use of electricity in transport and the

Directive 2003/96/EC**Proposal**

justification for the exemptions, reductions and differentiations laid down in this Directive. The report shall take into account the proper functioning of the internal market, environmental and social considerations, the real value of the minimum levels of taxation and the relevant wider objectives of the Treaties.

Article 30

~~Notwithstanding Article 28(2), Directives 92/81/EEC and 92/82/EEC shall be repealed as from 31 December 2003.~~

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

Article 31

This Directive shall enter into force on the day of its publication in the *Official Journal of the European Union*.

Article 32

This Directive is addressed to the Member States.

Article 32

Directive 2003/96/EC as amended by the acts listed in Annex II, Part A, is repealed with effect from 1 January 2023 without prejudice to the obligations of the Member States relating to the time-limits for the transposition into national law and the dates of application of the Directives set out in Annex II, Part B.

References to the repealed directives shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex III.

Article 33

This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

Article 1(1), Article 2(1), point (a), Article 2(2), Article 2(3), first subparagraph, Article 4, Article 6, Article 8(2), Article 10, Article 11, Article 12, Article 16, point (a), Article 16, point (b), Article 20, Article 21(1), point (a), Article 21(1), point (c), Article 21(1), points (e) to (h), Article 21(1), point (n), Article 21(3), Article 22(2) and (3), Article 22(5), Article 23, Article 24, Article 25(1), Article 26(2), and Article 27, which are unchanged by comparison with the repealed Directive, shall apply from 1 January 2023.

Article 34

Annexes to the Proposal (only changes displayed)

Amendments to Directive 2003/96/EC

ANNEX I

Annex I is completely deleted and replaced by the following:

Table A. — Minimum levels of taxation applicable to motor fuels for the purposes of Article 7 (in EUR/Gigajoule)

	Start of transitional period (01.01.2023)	Final rate after completion of transitional period (01.01.2033) before indexation
Petrol	10,75	10,75
Gasoil	10,75	10,75
Kerosene	10,75	10,75
Non-sustainable biofuels	10,75	10,75
Liquefied Petroleum Gas (LPG)	7,17	10,75
Natural gas	7,17	10,75
Non-sustainable biogas	7,17	10,75
Non renewable fuels of non-biological origin	7,17	10,75
Sustainable food and feed crop biofuels	5,38	10,75
Sustainable food and feed crop biogas	5,38	10,75
Sustainable biofuels	5,38	5,38
Sustainable biogas	5,38	5,38
Low-carbon fuels	0,15	5,38
Renewable fuels of non-biological origin	0,15	0,15
Advanced sustainable biofuels and biogas	0,15	0,15

Table B. — Minimum levels of taxation applicable to motor fuels used for the purpose set out in Article 8(2) (in EUR/Gigajoule)

	Start of transitional period (01.01.2023)	Final rate after completion of transitional period (01.01.2033) before indexation
Gasoil	0,9	0,9
Heavy fuel oil	0,9	0,9
Kerosene	0,9	0,9
Non-sustainable biofuels	0,9	0,9
Liquefied Petroleum Gas (LPG)	0,6	0,9
Natural gas	0,6	0,9
Non-sustainable biogas	0,6	0,9
Non renewable fuels of non-biological origin	0,6	0,9
Sustainable food and feed crop biofuels	0,45	0,9

	Start of transitional period (01.01.2023)	Final rate after completion of transitional period (01.01.2033) before indexation
Sustainable food and feed crop biogas	0,45	0,9
Sustainable biofuels	0,45	0,45
Sustainable biogas	0,45	0,45
Low-carbon fuels	0,15	0,45
Renewable fuels of non-biological origin	0,15	0,15
Advanced sustainable biofuels and biogas	0,15	0,15

Table C. — Minimum levels of taxation applicable to heating fuels (in EUR/Gigajoule)

	Start of transitional period (01.01.2023)	Final rate after completion of transitional period (01.01.2033) before indexation
Gas oil	0,9	0,9
Heavy fuel oil	0,9	0,9
Kerosene	0,9	0,9
Coal and coke	0,9	0,9
Non-sustainable bioliquids	0,9	0,9
Non-sustainable solid products falling within CN codes 4401 and 4402	0,9	0,9
Liquefied Petroleum Gas (LPG)	0,6	0,9
Natural gas	0,6	0,9
Non-sustainable biogas	0,6	0,9
Non renewable fuels of non-biological origin	0,6	0,9
Sustainable food and feed crop bioliquids	0,45	0,9
Sustainable food and feed crop biogas	0,45	0,9
Sustainable bioliquids	0,45	0,45
Sustainable biogas	0,45	0,45
Sustainable solid products falling within CN codes 4401 and 4402	0,45	0,45
Low-carbon fuels	0,15	0,45
Renewable fuels of non-biological origin	0,15	0,15
Advanced sustainable bioliquids, biogas and products falling within CN codes 4401 and 4402	0,15	0,15

Table D. — Minimum levels of taxation applicable to electricity (in EUR/Gigajoule)

	Start of transitional period (01.01.2023)	Final rate after completion of transitional period (01.01.2033) before indexation
Electricity	0,15	0,15

ANNEX II

Annex II is completely deleted and replaced by the following:

Part A

Repealed Directive with list of the successive amendments thereto (referred to in Article 32)

Council Directive 2003/96/EC(OJ L 283, 31.10.2003, p. 51)

Council Directive 2004/74/EC(OJ L 157, 30.4.2004, p. 87)

Council Directive 2004/75/EC(OJ L 157, 30.4.2004, p. 100)

Commission Implementing Decision (EU) 2018/552(OJ L 91, 9.4.2018, p. 27)

Part B

Time-limits for transposition into national law (referred to in Article 32)

Directive	Time-limit for transposition
2003/96/EC	31 December 2003
2004/74/EC	1 May 2004
2004/75/EC	1 May 2004

ANNEX III**CORRELATION TABLE**

Directive 2003/96/EC This Directive

Article 1	Article 1(1)
-	Article 1(2)
Article 2(1), point (a)	Article 2(1), point (a)
Article 2(1), points (b) to (h)	-
-	Article 2(1), points (b) to (o)
Article 2(2)	Article 2(2)
Article 2(3), first subparagraph	Article 2(3), first subparagraph
Article 2(3), second and third subparagraphs	-
-	Article 2(3), second, third and fourth subparagraphs
Article 2(4) and (5)	-
-	Article 2(4) to (8)
Article 3	-
-	Article 3
Article 4	Article 4
Article 5	-
-	Article 5
Article 6	Article 6
Article 7	-
-	Article 7
Article 8(1)	-
-	Article 8(1)
Article 8(2)	Article 8(2)
Article 9(1)	-
-	Article 9(1)
Article 9(2)	-
Article 10(1)	Article 10
Article 10(2)	-
Article 11	-
Article 12	Article 11
Article 13	Article 12
-	Article 13
Article 14	-
-	Articles 14 and 15
Article 15(1), point (a)	Article 16, point (a)
Article 15(1), point (b)	Article 16, point (b)
-	Article 16, point (b), last sentence
Article 15(1), point (c)	-
Article 15(1), point (d)	-
-	Article 16, point (c), (d) and (e)
Article 15(1), points (e) to (l)	-
Article 15(2) and (3)	-
Article 16	-
-	Article 17
Article 17	-
Article 18	-

Article 18	-
Articles 18a and 18b	-
-	Article 19
Article 19	Article 20
Article 20(1), point (a)	Article 21(1), point (a)
-	Article 21(1), point (b)
Article 20(1), point (b)	Article 21(1), point (c)
Article 20(1), point (c)	-
-	Article 21(1), point (d)
Article 20(1), points (d) to (g)	Article 21(1), points (e) to (h)
-	Article 21(1), points (i) to (m)
Article 20(1), point (h)	Article 21(1), point (n)
--	Article 21(1), second subparagraph
Article 20(2)	Article 21(2)
Article 20(3)	Article 21(3)
Article 21(1)	-
-	Article 22(1)
Article 21(2)	-
Article 21(3) and (4)	Article 22(2) and (3)
Article 21(5)	-
-	Article 22(4)
Article 21(6)	Article 22(5)
Article 22	Article 23
Article 23	Article 24
Article 24(1)	Article 25(1)
Article 24(2)	-
-	Article 25(2)
Article 25(1)	-
-	Article 26(1)
Article 25(2)	Article 26(2)
Article 26(1) and (2)	Article 27(1) and (2)
Article 26(3)	-
Article 27	-
-	Article 28
-	Article 29
Article 28	-
-	Article 30
Article 29	-
-	Article 31
Article 30	-
-	Article 32
Article 31	-
-	Article 33
Article 32	Article 34
Annexes I, II and III	-
-	Annexes I, II and III

Our European energy team for you



Felix Fischer,
MBA (Stellenbosch)
Partner



Dr. Marco Núñez Müller,
LL.M. (Col.)
Partner



Dr. Carmen Schneider
Partner



Miriam le Bell, LL.M.
Counsel



Marieke Lüdecke
Senior Associate



Dr. Christos Paraschiakos
Senior Associate



Christiane Stoehr
Associate



Celia Renz
Associate



Mario Schliephake, B.A.
Associate



Philipp Reinecke,
Maîtr. en droit, LL.M.
Associate

Chatham Partners LLP

Neuer Wall 50

20354 Hamburg

Telephone: +49 (0) 40 303 963 (-0)

www.chatham.partners

