

Council Directive 2004/74/EC of 29 April 2004 amending Directive 2003/96/EC as regards the possibility for certain Member States to apply, in respect of energy products and electricity, temporary exemptions or reductions in the levels of taxation

COUNCIL DIRECTIVE 2004/74/EC

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

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 93 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament<sup>(1)</sup>,

Having regard to the opinion of the European Economic and Social Committee<sup>(2)</sup>,

Whereas:

- (1) Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity<sup>(3)</sup> replaced, with effect from 1 January 2004, Council Directive 92/81/EEC of 19 October 1992 on the harmonisation of the structures of excise duties on mineral oils<sup>(4)</sup> and Council Directive 92/82/EEC of 19 October 1992 on the approximation of the rates of excise duties on mineral oils<sup>(5)</sup>. It defines the fiscal structures and the levels of taxation to be imposed on energy products and electricity.
- (2) The minimum rates set by Directive 2003/96/EC are liable to create serious economic and social difficulties for certain Member States, namely Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovenia and Slovakia, in view of the comparatively low level of excise duties previously applied, the ongoing economic transition of those Member States, their relatively low income levels and their limited ability to offset that additional tax burden by reducing other taxes. In particular, the price increases brought about by application of the minimum rates set by Directive 2003/96/EC are likely to have adverse effect on their citizens and national economies, creating for instance an unbearable burden for small and medium-sized enterprises.
- (3) Those Member States should therefore be permitted, on a temporary basis, to apply additional exemptions from or reduced levels of taxation, where it will not be detrimental to the proper functioning of the internal market and will not result in the distortion of competition. Moreover, consistent with the principles in accordance with which transitional periods were originally granted under Directive 2003/96/EC, any

such measures should be designed to bring about a progressive alignment with the applicable Community minimum rates.

- (4) The 2003 Treaty of Accession<sup>(6)</sup> provides for transitional arrangements, in the case of Poland and Cyprus, for the implementation of Directives 92/8 I/EEC and 92/82/EEC. The Treaty also provides for specific measures on issues relating to energy in Lithuania and Estonia. Those measures should be adequately taken into account in the context of permitting dedicated tax exemptions.
- (5) This Directive should not prejudice the outcome of any procedures relating to distortions of the operation of the single market that may be undertaken, in particular under Articles 87 and 88 of the Treaty. It should not override the requirement for Member States to notify instances of potential State aid to the Commission under Article 88 of the Treaty.
- (6) Certain provisions of Directive 2003/96/EC should be clarified as regards the references to the transitional period set out therein.
- (7) Directive 2003/96/EC should therefore be amended accordingly,

HAS ADOPTED THIS DIRECTIVE:

*Article 1*

Directive 2003/96/EC is hereby amended as follows:

1. Article 18 is hereby amended as follows:
  - (a) in paragraph 1, the first subparagraph shall be replaced by the following: ‘By way of derogation from the provisions of the present Directive, the Member States specified in Annex II are authorised to continue to apply the reductions in the levels of taxation or the exemptions set out in that Annex.’;
  - (b) in paragraph 2, ‘in paragraphs 3 to 12’ shall be replaced by ‘in paragraphs 3 to 13’;
2. the following Article shall be inserted:

*Article 18a*

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

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

- 2 Notwithstanding the periods set out in paragraphs 3 to 11 and provided that this does not significantly distort competition, Member States with difficulties in implementing the new minimum levels of taxation shall be allowed a transitional period until 1 January 2007, particularly in order to avoid jeopardising price stability.
- 3 The Czech Republic may apply total or partial exemptions or reductions in the level of taxation of electricity, solid fuels and natural gas until 1 January 2008.

4           The Republic of Estonia may apply a transitional period until 1 January 2010 to adjust its national level of taxation on gas oil used as propellant to the new minimum level of EUR 330 per 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 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.

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 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.

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.;

3.           an Annex III, the text of which is set out in the Annex to this Directive, shall be added.

#### *Article 2*

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

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

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

*Article 3*

This Directive shall enter into force on 1 May 2004.

*Article 4*

This Directive is addressed to the Member States.

Done at Luxembourg, 29 April 2004.

*For the Council*

*The President*

M. MCDOWELL

## ANNEX

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

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

- (1) Opinion delivered on 30 March 2004 (not yet published in the Official Journal).
- (2) Opinion delivered on 31 March 2004 (not yet published in the Official Journal).
- (3) OJ L 283, 31.10.2003, p. 51.
- (4) OJ L 316, 31.10.1992, p. 12. Directive as amended by Directive 94/74/EC (OJ L 365, 31.12.1994, p. 46).
- (5) OJ L 316, 31.10.1992, p. 19. Directive as amended by Directive 94/74/EC.
- (6) OJ L 236, 23.09.2003, p. 17.