



EUROPEAN COMMISSION

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*Ms Ewa KOPACZ
Marshal of the Sejm
Ul. Wiejska 4/6
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Dear Marshal,

I would like to thank you on behalf of the Commission for the opinion of the Sejm of the Republic of Poland on the Commission Proposal for a Council Directive amending Directive 2003/96/EC {COM(2011)169} on Energy Taxation.

The efficient functioning of the EU requires the active participation of all concerned stakeholders, including national parliaments. The Commission welcomes in particular the interest shown by national parliaments in its proposed revision of the Energy Taxation Directive, and takes note of the opinions expressed on a range of issues, including the compliance of the proposal with the principle of subsidiarity.

By way of introduction, the Commission would like to underline that the proposed Directive is in essence intended to ensure that the internal market continues to function properly in a context of new requirements relating to the limitation of climate change, to the use of renewable energy sources and to energy savings, as endorsed by the Presidency Conclusions of the European Council of 8-9 March 2007 and of 11-12 December 2008. In addition, the Presidency Conclusions of the European Council of 13-14 March 2008¹ refer expressly to the need to consider a review of the Energy Taxation Directive to bring it more closely into line with the EU's Energy and Climate Change objectives.

In that respect, attention has also to be drawn to Article 11 of the TFEU. According to this provision, environmental protection requirements must be integrated into the definition and implementation of the Union's policies and activities, in particular with a view to promoting sustainable development.

By their very nature, the above objectives require action at Union level, since they cannot be sufficiently achieved by the Member States. Moreover, the Commission

¹ 7652/1/08 rev.1, 20/5/2008.

considers that its proposal does not go beyond what is necessary to achieve the objectives concerned.

The Commission considers that a separate treatment of CO₂-related taxation is key to these objectives. In addition, the separation of this taxation from general energy consumption taxation also creates the technical conditions for avoiding potential distortions due more specifically to the coexistence of energy taxation and ETS. In this regard, the Commission draws attention to a request made by the Council and entered into the minutes of the Council meeting at the time of adoption of Directive 2003/96/EC. This request reads as follows: "On the basis of a proposal from the Commission, the Council undertakes to positively examine tax measures which will accompany the future implementation of a Community emission trading scheme, particularly in order to avoid cases of double taxation."²

In response to the more specific concerns expressed by the Sejm of the Republic of Poland the Commission would stress that it considers its proposal to be based on a solid Impact Assessment. This Impact Assessment defines the problem, describes objectives, analyses the possible policy options, assesses their impact, including at the level of individual Member States, and elaborates on why the preferred policy set is best able to achieve the objectives set out.

The impacts of the proposal on the competitiveness of business have been analysed in detail in the Impact Assessment and did not give rise to substantiated concerns. It should be borne in mind that the level of environmental protection retained corresponds to the orientations agreed upon in the context of the EU's overall energy and climate change policy and notably the 2020 objectives agreed upon in March 2007. As regards the position of individual Member States, including Poland, the proposal mirrors the so-called effort-sharing decision (Decision No 406/2009/EC of the European Parliament and of the Council of 23 April 2009). It also takes account of certain industrial sectors under a potential risk of carbon leakage.

As far as social impacts are concerned, the Commission is aware of the sensitive nature of measures having a potential impact on energy costs for households and of the different ability of Member States to mitigate the impacts of an increase in energy prices on households due to different social systems. The Commission has taken this into account when preparing the proposal for a revision of the Energy Taxation Directive by allowing Member States to exempt energy products and electricity used for household heating from taxation.

Finally, the proposal is not intended to penalise individual Member States for choices they have made in terms of their national energy mix. In accordance with the terms of the proposal, Member States would continue to be able to fix national amounts of taxation in accordance with their needs and wishes, provided they respect the criteria of the Directive, in particular the minimum amounts foreseen therein. Consequently, they would have a variety of possibilities to reflect CO₂ emissions and energy content in the energy tax system. For the same reasons, the influence of a Directive containing provisions along the lines of the proposal on the energy mix of a given Member State would to a large extent depend upon the way those provisions are implemented in that State. Adaptations conditioned by commitments already made, including quantified

² 13253/03 ADD 1, 07/10/2003.

emission reduction targets, will be necessary independently from the proposal in question.

I would like to thank you again for the Opinion of the Sejm of the Republic of Poland and I look forward to continuing our political dialogue in future.

Yours faithfully,

*/-/ Maroš Šefčovič
Vice-President*