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Mr Bernard ACCOYER
President of the
National Assembly of France
Hotel de Lassay 128,
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75007, PARIS

Dear President,

The Commission would like to thank the *Assemblée nationale* for its reasoned opinion on the Commission Proposal for a Council Directive amending Directive 2003/96/EC restructuring the Community framework for the taxation of energy products and electricity {COM(2011)169 final}. Let me also apologise for the long delay of this reply.

The Commission takes particular note of the conclusion of the *Assemblée nationale* that the proposal does not comply 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 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 the EU ETS. In this regard, the Commission draws attention to a request by the Council of the EU, in

¹ 7652/1/08 rev.1, 20/5/2008.

a statement 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." (See Council of the EU document 13253/03 ADD 1, 07/10/2003).

The Commission considers that it has fulfilled all the procedural obligations as provided for by the Protocol on the application of the principles of subsidiarity and proportionality. Article 5 of the Protocol requires that any draft legislative act contains a statement making it possible to appraise the compliance with these principles. The Commission has provided sufficiently detailed explanations to fulfil this requirement, bearing in mind the scope of the amendments to Directive 2003/96/EC. The Explanatory Memorandum contains a section on subsidiarity on p. 12.

As regards the specific issue of the abolition of the possibility to apply a differentiated rate of taxation to energy products used by taxis raised in your letter, the draft 15th recital and the Explanatory Memorandum set out the reasons for this element of the proposal. According to the information available to the Commission the differentiated tax rate has in practice only been applied to diesel which results in a subsidy for the use of this particular energy product. As there is no justification for such a privileged tax treatment and as this contradicts the logic and the principles of the new legislative framework as described above, this possibility should be removed. In addition, the provision as it currently stands is no longer compatible with the objective of policies promoting alternative fuels, as well as policies promoting alternative energy carriers and the use of cleaner vehicles in urban transport. Also the Commission sees no benefits from subsidies aimed at taxis as they do not seem to provide for efficient fuel use unlike other means of public transport.

Regarding your comments concerning the amendments to Article 18 of Directive 2003/96/EC, the Commission is of the opinion that the present text of the Directive does not allow for the application of differentiated taxation rates for electricity on a regional basis. For this reason, the Commission now proposes to amend the Directive providing for more flexibility compared to the current situation by allowing French regional authorities to apply a level of general energy consumption taxation which is higher than the corresponding national levels of taxation. The new provision takes into consideration the long-term process of decentralisation in France but also ensures that any differentiation of taxation rates does not hinder the proper functioning of the internal market and does not affect intra-EU circulation of energy products.

The Commission hopes that these explanations provide for more clarity and is looking forward to further developing its political dialogue with the Assemblée nationale.

Yours faithfully,

*Maroš Šefčovič
Vice-President*