



EUROPEAN COMMISSION

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Dear President,

The Commission would like to thank you for the opinion of the Senato della Repubblica on the Commission Proposal for a Council Directive amending Directive 2003/96/EC (COM(2011)169) and apologises for the delay in responding to this opinion.

With regard to the specific remarks in your opinion the Commission would like to offer the following observations, which reflect the analysis contained in the Impact Assessment Report accompanying the proposal.

The proposal makes a distinction between sectors covered by the EU Emission Trading System (ETS) and those outside it helping to avoid double taxation. It will complement the existing EU ETS by applying a CO₂ tax only to sectors that are not covered by the System (e.g. transport, households, agriculture and small industrial installations) which account for half of the EU's CO₂ emissions. It should be noted that the proposal follows up on a request by the Council to deal with cases of double taxation which currently exist due to overlaps of the EU ETS with Directive 2003/96/EC. The statement entered into the minutes of the Council meeting at the time of adoption of Directive 2003/96/EC, reads: "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."

The Commission is convinced that the proposal for a revision of Directive 2003/96/EC allows Member States to preserve the necessary flexibility at national level as it provides only for minimum levels of taxation. Member States will still be free to set the national tax rates above the minimum as they see fit provided that they tax the energy and CO₂ emissions according to the use of the energy products and regardless of their source with the condition not to apply CO₂ taxation to energy products considered as CO₂ free.

As to the automatic indexation provided for in the proposed new Article 4(4) of the Directive, it concerns only the minimum levels of taxation, and more specifically regarding general energy consumption taxation. Member States are free to adapt their national levels of taxation to inflation or deflation as they consider appropriate, as long as they respect the applicable minimum levels. The purpose of the indexation of these minimum levels, which are in the nature of an absolute amount, is to maintain their real value. Without regular updates, that value would be eroded over time and the intended effects on the internal market and, by the same token, the energy saving objectives, will not be obtained.

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As regards the proposal to empower the Commission to adopt delegated acts for an indeterminate period of time (proposed new Article 27), the Commission would like to make two points. First, this approach corresponds to the characteristics of the (only) delegation proposed (Article 2, paragraph 5) which, in addition, just replaces a similar mechanism already contained in the existing Directive, equally unlimited in time. Second, the Treaty procedure for 'delegated acts' includes adequate safeguards, as the authorisation to the Commission may be revoked at any time by the Council. In addition, all delegated acts shall be notified to the Council, which may object within a period of three months (Articles 27a and 27b of the Proposal).

The Commission hopes that these clarifications address the concerns expressed in the opinion and is looking forward to further developing its political dialogue with the Senato della Repubblica.

Yours faithfully,

*Maroš Šefčovič
Vice-President*