



EUROPEAN COMMISSION

*Brussels, 19.12.2011
C(2011) 9311 final*

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Dear Presidents,

I would like to thank you on behalf of the Commission for the opinion submitted by the Congreso de los Diputados and the Senado of the Kingdom of Spain on the Commission Proposal for a Council Directive amending Directive 2003/96/EC (COM(2011)169) on Energy Taxation.

The Commission has taken in particular note of your comments as regards the proposal's compliance 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 that 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.

¹ 7652/1/08 rev.1, 20/5/2008.

The Commission considers that a separate treatment of CO-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 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".

As you have noted, Article 5 of the Protocol on the application of the principles of subsidiarity and proportionality to the Treaty requires that any draft legislative act contains a statement making it possible to appraise the compliance with these principles.

The Commission considers that sufficiently detailed explanations to fulfil the above mentioned requirements has been provided, considering the scope of the amendments to Directive 2003/96/EC. The Impact Assessment accompanying the proposal defines the problem, describes objectives, analyses the possible policy options and elaborates on why the preferred policy set is best able to achieve the objectives set out. Moreover, it includes a specific section on the EU right to act and limitations of purely national strategies (chapter 3.3). Thus, in an area where Directive 2003/96/EC has already successfully removed certain obstacles to the internal market, notably through the introduction of minimum amounts of taxation, the Commission has proposed, the adaptation of that Directive to changes in circumstances, having regard to the general interests recognised by the Treaties. Those changes include in particular one development equally underlined in your opinion, i.e. of the energy and climate policy framework. The Commission endeavours to adequately reflect the key elements contained in the impact assessment also in its explanatory memorandum, including as regards subsidiarity.

Regarding the view that the Impact Assessment accompanying the proposal is not extended to other motor fuel products or to other product families the Commission considers to have made a sufficiently detailed analysis of the impact on motor fuels other than petrol and diesel (the impacts on LPG, natural gas and biofuels are all elaborated in the Impact Assessment) as well as other product families. The Explanatory Memorandum moreover clarifies that the requirement to reflect equal minimum levels of taxation in national rates is a necessary precondition to ensure consistent treatment of energy sources for all uses.

The Commission would like to take the opportunity to confirm that discussions on the proposal have already started in the Council of the EU. I would like to thank you again for the Opinion submitted by the Congreso de los Diputados and the Senado of the Kingdom of Spain and I look forward to continuing our political dialogue in future.

Yours faithfully,

*/-/ Maroš Šefčovič
Vice-President*