COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a

COUNCIL DIRECTIVE

amending Directive 2003/96/EC as regards the adjustment of special tax arrangements for gas oil used as motor fuel for commercial purposes and the coordination of taxation of unleaded petrol and gas oil used as motor fuel

(presented by the Commission)

{SEC(2007) 170}
{SEC(2007) 171}

EXPLANATORY MEMORANDUM

CONTEXT OF THE PROPOSAL

- **Grounds for and objectives of the proposal**

The White Paper on Transport *European transport policy for 2010: time to decide*[1], noted that with the road transport sector now fully opened up to competition, the absence of harmonised fuel taxes seemed increasingly to be an obstacle to the smooth functioning of the internal market. It concluded on this issue by stressing the need to make the tax system more consistent by proposing uniform taxation for commercial road transport fuel in order to round off the internal market. However, it has subsequently become apparent from a political and economical point of view, that full-fledged harmonization of the duty applicable to commercial gas oil is not an adequate answer.

It should be recalled that an initial proposal relating to the taxation of commercial gas oil (or more commonly known as "commercial diesel"[2]) was presented in 2002[3]. This proposal was withdrawn in the context of the screening of legislative proposals pending before the legislator[4]. However, the Commission also announced its intention to reconsider the need for legislative intervention in the light of the results of a comprehensive impact assessment.

In its recent Communication to the Council and the European Parliament - COM(2006) 314, 22.6.2006, Keep Europe moving – Sustainable Mobility for our continent, Mid-term review of the European Commission's 2001 Transport White Paper - the Commission noted that it "*will examine how excessive differences in fuel tax levels can be narrowed*". It also stressed that "*transport policy is closely intertwined with energy policy, on the basis of common objectives: lowering CO_2 emissions and reducing EU import dependency on fossil fuels*"[5] and underlined that "*international environmental commitments, including those under the Kyoto Protocol, must be integrated into transport policy*".

The Communication of the Commission - COM(2006) 545, Action Plan for Energy Efficiency: Realising the Potential - confirmed the intention of the Commission to propose in 2007 special tax arrangements for commercial gas oil, aiming at narrowing excessive differences in tax levels between Member States, in order to increase energy efficiency in the transport haulage by reducing "fuel tourism".

Consequently, this proposal aims first of all to reduce the distortions of competition related to excise differentials which affect haulage markets. In so doing, it will also foster growth, jobs and competitiveness, notably by enabling the advantages of a single market to be fully exploited. Secondly, the proposal meets common transport policy objectives and will provide better protection for the environment. Finally, it is clearly consistent

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1 COM(2001) 370, 12.9.2001.

2 The expression commercial gas oil was chosen since it corresponds to the official designation in the relevant CN codes.

3 Proposal for a Council Directive amending Directive 92/81/EEC and Directive 92/82/EEC to introduce special tax arrangements for gas oil fuel used for commercial purposes and to align the excise duties on petrol and gas oil fuel - COM(2002) 410, 24.7.2002.

4 COM(2005) 462, 27.9.2005.

5 European Council, 23-24 March 2006.

with the general principles on excise duty set out in the Commission's communication, *Tax policy in the European Union - Priorities for the years ahead*[6]. It is submitted without prejudice to the conclusions of the mid-term review of the Energy Tax Directive due in 2008.

- **General context**

Fuel (including taxes) represents on average between 20 and 30% of the running costs of a road haulage business. As excise duty represents between 30 and 60% of the pump price of gas oil fuel (excluding VAT), this duty accounts for between 6% and 18% of the running costs of a road haulage business. At present in a liberalised market, where competition is stiffer, differences in operating costs resulting from national taxes and levies have a greater impact.

The reason is simple: big trucks have tanks of huge capacity, which allow them to cover between 1 500 and 3 000 kilometres on a single tank. That means in reality that hauliers involved in international activities or located near the border of a low taxing country conduct a kind of fiscal planning, known as fuel tourism: they take advantage of the very significant differences in national excise duties on gas oil fuel by filling up in Member States with the lowest taxes.

The first negative consequence is that tax-planning behaviour creates **distortions of competition on haulage markets** to the extent that all operators do not enjoy the same possibilities of purchasing low taxed fuel, due to the range of their trucks, the scope of their activity or the distance from their main location to the border of a low-taxing country. Because of the stiff competition on the haulage market, the distortions of competition described above have consequences in terms of national market shares. A study on bilateral road transport[7] carried out by the French Transport Ministry noted important changes in market shares on the European market between 1997 and 2001. Operators from Luxemburg or Austria have, for example, increased their market shares over most of their competitors whereas the United Kingdom registered a loss on all markets. It determined that two thirds of the variations observed between 1997 and 2001 can be attributed to three factors: tax differences on gas oil, differences in corporate tax and the evolution of salaries between two given countries. Tax differences for gas oil appear to be the main factor explaining by itself 40 % of the market share variations observed.

The other negative consequences of fuel tourism are **the impact on the environment** in case of detours. As rational operators, drivers will make use of the gas oil price difference as much as they can and tank in the Member State where it is the cheapest. In so doing they would also take into account the additional costs involved (road charges, fuel and time spent, risks encountered on the road such as congestion and accidents...). Cases where operators simply use the opportunity to tank "*en route*", without making any detours mainly amount to a shifting of consumption that would in any event have taken place in one Member State or another, although there are also some additional consumption (and emissions) since reduced fuel costs due to tax avoidance stimulate demand. In contrast, when drivers make deliberate

6 COM(2001) 260, 23.5.2001.

7 BIPE (2005), Evaluation des conséquences de la hausse du prix du gazole sur les entreprises de transport routier de marchandises, Etude réalisée pour le Ministère des Transports, de l'Équipement, du Tourisme et de la Mer.

detours from their routes to take advantage of the differences in national excise duties, this has a net negative effects on the environment because of the longer distance driven.

Concerning detours, Michaelis (2003)[8] showed that Germans are willing to drive 2 to 4 additional kilometres for each Euro cent price differential compared to a neighbouring country in the case of gas oil. Given the existing 2003 price differentials between Germany and its neighbours, this relates to an average distance of about 30 to 35 additional kilometres. A 1990 study concerning the Netherlands established that with a price difference of 0.14-0.16 ECU per litre compared to Belgium and Germany, 10 million extra kilometres were driven to refuel across the border[9].

Fuel tourism finally leads to **losses in budgetary resources for those Member States applying a relatively high excise duty on gas oil**. In Germany, the Schmid Traffic Service GmbH estimated that the tax loss from excise duties on mineral oils in 2004 resulting from fuel tourism (i.e. professional gas oil) was € 1 915 000 000. The total loss is even higher and amounts to € 3.6 billion each year (besides excise duties on mineral oils, it comprises additional losses in VAT and excise duties on cigarettes, because of the reduced tax revenues from VAT and the reduced amounts of cigarettes sold at filling stations).

- **Existing provisions in the area of the proposal**

Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity (the Energy Tax Directive or ETD)[10] lays down the taxable products concerned, the uses that make them liable to tax and the minimum levels of taxation applicable to each product depending on whether it is used as propellant, for certain industrial and commercial purposes or for heating. To take gas oil and unleaded petrol, only the structure of excise duties is harmonised across the Community, according to the following minimum levels:

In euros per 1000 l	1 January 2004	1 January 2010
Unleaded petrol	359	359
Gas oil (diesel)	302	330

The ETD also gives the possibility to Member States to create a specific level of taxation for commercial gas oil (decoupling), provided that the minimum levels are observed and that the rate for commercial gas oil does not fall below the national level of taxation in force on 1 January 2003.

In case they wish to set the commercial gas oil rate below the national level of taxation in force on 1 January 2003, Article 7(4) of the ETD enables them to do so - provided the minimum levels are respected - by introducing road user charges, as long as the overall tax burden remains broadly equivalent. However, this possibility is in practice solely opened for the United Kingdom, since it is the only Member States verifying the additional requirement

8 Michaelis (2003) Tanktourismus – eine Szenarioanalyse, In Zeitschrift für Verkehrswissenschaft.

9 Effects at the border of a petrol tax increase on 1 January 1990, P. M. Blok and A. P. Muizer, Nederlands Economisch Instituut, TK 1990-1991, 21.665 Nr 3, Rotterdam.

10 OJ L 283, 31.10.2003, p. 51, as last amended by Directive 2004/75/EC (OJ L 157, 30.4.2004, p. 100).

according to which the national level of taxation in force on 1 January 2003 for gas oil used as propellant has to be at least twice as high as the minimum level of taxation applicable on 1 January 2004.

This final requirement has been particularly distorting since it inhibited tax policy interaction among Member States to lead to a reduction in tax divergences. For the Member States (except the United Kingdom) taxing above the minimum in 2003, the only possibility at present to decouple is by *increasing* the rate applied to non-commercial traffic. Other things being equal, this cannot help reduce the existing differences between Member States in commercial gas oil rates and will only increase the differences in non-commercial gas oil rates, which might in turn increase tank tourism made by private cars. **For the already high-taxing countries in 2003 there is in reality no room for manoeuvre in order to reduce the existing distortions under the current provisions.**

- **Consistency with other policies and objectives of the Union**

To do more to confront transport users with real costs and to change price structures, the White Paper *European transport policy for 2010: time to decide,* indicates two additional actions:

– the harmonization of the minimum clauses in contracts governing transport activity in order to allow tariffs to be revised should costs increase (e.g. a fuel price rise), and

– the definition of common principles for charging for infrastructure use covering the different transport modes.

The first action was assessed by a comprehensive impact assessment in 2005. While five alternative policy options were identified[11], a first assessment lead to further analyses on the basis of three main orientations: i) amendment to Regulation (EEC) No 4058/89[12], ii) no policy change, iii) harmonisation of fuel taxes with minimum contract clauses. The results of the impact assessment confirmed to the Commission the need to make a proposal to modify special tax arrangements for gas oil fuel used for commercial purposes.

Secondly, on infrastructure charges, the Commission is required to present by June 2008, after examining all options including environment, noise, congestion and health-related costs, a generally applicable framework for the assessment of external costs for all modes of transport to serve as the basis for future calculations of infrastructure charges[13]. This proposal takes account of possible future developments of infrastructure charges, since it offers more flexibility for the implementation by Member States of both excise duties and road charges, while avoiding double taxation and without imposing additional burdens on operators.

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[11] No policy change, amendment to Regulation (EEC) No 4058/89, harmonisation of fuel taxes, introduction of price insurances, and adequate regulation that works as an obstacle to outsourcing practices.

[12] Council Regulation (EEC) No 4058/89 of 21 December 1989 on the fixing of rates for the carriage of goods by road between Member States (OJ L 390, 30.12.1989, p. 1).

[13] Article 11 of Directive 1999/62/EC on the charging of heavy goods vehicles for the use of certain infrastructures (OJ L 187, 20.7.1999) as amended by Directive 2006/38/EC (OJ L 157, 9.6.2006, p. 8).

CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

- **Consultation of interested parties**

Consultation methods, main sectors targeted and general profile of respondents

A written questionnaire was published on the Commission's website on 20 July 2006 in order to invite the public to provide input to the discussion, gather relevant feedback and assist the Commission in developing its policy concerning commercial gas oil. Comments were invited by 30 September 2006. In parallel, the Commission sent more detailed questionnaires to the representatives of the main stakeholders (road transport associations (both international and national), car industry associations and petroleum industry associations). A total of 52 external contributions were received in response to the consultation. Of that, 37 were from national federations or associations, 7 were from European or international bodies, 7 were from business and one was from a private citizen. The main industry sector that reacted to the consultation was the haulage sector, which accounted for more than half of the responses. Tank (or service) stations and petroleum industry participation amounted to more than 10% of the responses. Other sectors, such as automobile industry, maritime ports, handcraft operators and railway firms also participated.

Summary of responses and how they have been taken into account

The haulage industry warmly welcomed the Commission initiative. The great majority of the hauliers support a change to the current situation. The preferred option is total harmonisation in the nearest possible future (2018 seems too far away) and, if possible, at a lower level. In case this option is not realistic, they could accept an enhanced approximation as an interim solution towards harmonisation or as a second best option.

The representatives of the automobile industry acknowledged that the current situation is not satisfactory from an internal market perspective. However, they are not convinced that the magnitude of the problems is such that it warrants a change to fuel taxation systems. They would prefer the no-change option to any of the other proposed options.

At European level, representatives of the petroleum industry have adopted a neutral stance on the proposed options. However, when located in high-taxing countries, tank stations representatives support enhanced approximation or, even preferably, total harmonisation.

The Commission took the responses into account.

- **Collection and use of expertise**

Beyond the comprehensive consultation of interested parties in the impact assessment, position papers and articles have been taken into account. In addition, the Commission has used the results of three models in order to assess the impacts (Tremove, IPTS transport technologies model (Poles) and TRANSTOOLS).

IMPACT ASSESSMENT

In order to examine how the problem of differences in commercial gas oil tax levels can be addressed, the Commission began by assessing three basic approaches.

The first approach (option A) consists of not intervening further at Community level (the no policy change option). It will not solve the problem of distortions of competition currently existing on the haulage market, which has consequences in terms of market shares and employment (increase in low-taxing Member States to the detriment of high-taxing Member States). Option A will not address the problem of detours, which resulted in consumption of a total of 42 500 million litres fuel between 2007 and 2030 and related pollutant emissions (2.2 million tons of CO_2). It was therefore not an option that the Commission chose to pursue.

The second option (option B) consists of programming full harmonisation between Member States of excise duties on commercial gas oil. In 2018, the single level would be € 400/1000 l. Moreover, the unleaded petrol tax rate would not be less than the rate applied to commercial gas oil. Full harmonisation is the option that allows maximum reduction in distortions of competition, without increasing the administrative costs too much. Nevertheless, this option would oblige 22 Member States to increase their excise duty for commercial gas oil to reach the level of € 400/1000 l and 5 Member States to reduce their duty rates. It will lead to an increase in the rate for unleaded petrol for 9 Member States from 2014 and may lead to an increase in non-commercial excise duty in two Member States (in case Germany and the United Kingdom decided to compensate the important decrease in commercial rate by an increase in the non-commercial rate). This option will be neutral for the car industry. From an environmental point of view, option B leads to a small increase in gas oil consumption, a small decrease in consumption of unleaded petrol and a very small increase in pollutant emissions (in case fuel tourism is not taken into account). However, since it is the option that reduces the detours to the greatest extent, it is also the one that reduces to their minimum levels the related CO_2 emissions (0.1 million tons), pollutants and tax avoidance. From a social point of view, this is the option that might have the largest impact (although it is likely to remain modest), with less congestion and accidents on the roads, less working hours for drivers and the largest, although modest, employment shifts at regional/national levels. Nevertheless, option B will have the greatest negative impact on budgets (-€ 71.8 billion between 2007 and 2030, reduced to -€ 58,2 billion if the reduction in fuel tourism is taken into account). It was also considered not to be realistic from a political point of view. For all these reasons, this option was not pursued by the Commission.

The third option (option C) consists of the enhanced approximation of excise duties applicable to commercial gas oil. A fluctuation band would be set at Community level, with a minimum and a maximum tax. Member States would have to set the level of taxation applicable to commercial gas oil within the band. The width of the fluctuation band should be progressively reduced to reach € 100 by 2010. In order to give time to Member States benefiting from transitional periods to adapt, option C retains the current minimum levels fixed by the ETD as the base line of the fluctuation band until 2013. Subsequently, two further sub-options were assessed: (i) from 1 March 2013, the band would be indexed (option C1) or (ii) the band would remain stable, but would take a higher minimum level than that currently fixed in the Energy Tax Directive i.e. € 359 per 1000 litres, the same minimum level that applies to unleaded petrol (option C2). In options C1 and C2, the unleaded petrol national tax rate would not be less than the national rate applied to commercial gas oil. **The impact**

assessment showed that each of these variations of option C has disadvantages. It was thus considered appropriate to bring forward to 2012 the date of implementation of indexation (option C1) and of equalization with unleaded petrol (C2) and to add a fifth option (C2+), in the light of the results of public consultation and of econometric simulations. In all three C sub-options, those Member States benefiting from transitional periods will have to respect the new rates only when their transitional period has expired.

Option C2+ consists of increasing the minimum level for gas oil to € 359/1000 l in 2012, and subsequently to € 380 in 2014, in order to avoid a rapid erosion of the tax rate in real terms and to reduce the distortions of competition even further. Option C2+ does not include a fluctuation band and thus no maximum level. As for options C1 and C2, the unleaded petrol national tax rate would not be less than the national rate applied to gas oil.

In addition, in order to be consistent with other Community policies, to facilitate the implementation of decoupling and to enable the reduction of tax differences in practice, options C1, C2 and C2+ envisage to modify Article 7(4) of the ETD and provide that Member States, which apply or introduce a system of road user charges for motor vehicles using commercial gas oil, may apply a rate to gas oil used by such vehicles lower than the national level of taxation in force on 1 January 2003, as long as the overall tax burden remains broadly equivalent, and provided that the Community minimum level applicable to commercial gas oil is observed. The requirement set out in Article 7(4) whereby the national level of taxation in force on 1 January 2003 for gas oil used as propellant must be at least twice as high as the minimum level of taxation applicable on 1 January 2004 would not be maintained.

Assessment of options C:

Option C1 and option C2 imply an increase in gas oil excise duty in 18 Member States by 2014, against 21 in option C2+. Whereas option C2 will have no influence on unleaded petrol excise duties, C1 and C2+ will lead to an increase in unleaded petrol excise duty in 9 Member States, from 2016 (C1) and 2014 (C2+). Since it does not include a fluctuation band and thus no maximum level, option C2+ should have no influence on non-commercial gas oil excise duty. All three options will allow reductions in distortions of competition. All things being equal, since the minimum level of taxation for commercial gas oil increases more under C1 than under C2 in the long run, C1 will allow reductions in differences to occur to a greater extent than under C2. In C2+, the amount of the reduction would depend on the reactions of the currently high-taxing Member States. In case they decide to reduce their rate and introduce road charges, the reduction in taxation differences will also be greater than that obtained under C2, thanks to the higher minimum level. Administrative costs will be of the same order as in option B and do not seem to be an issue that preoccupies the industry. The impact on the car industry, measured in terms of unleaded petrol and gas oil vehicles stock, appear to be very small under all options. None of the options should have a significant impact on transport demand or on modal shift. They could all have small positive social effects, in terms of reduction in congestion, accidents and working hours of drivers, but to a lesser extent than under option B which indeed is liable to reduce detours to the greatest possible extent. In terms of employment, all these options could lead to some shift at regional/national level, but no change should be observed at European level, all other things being equal.

The biggest differences between these three options concern fuel consumption, the environmental impact, impact on fuel tourism and the budgetary impact. Whereas options C1 and C2 lead to small increases in gas oil consumption and decreases in consumption of unleaded petrol (given the upper limit to gas oil taxation), C2+ is the only option that enables both gas oil and unleaded petrol consumption to be reduced. From an environmental point of view, C2+ contributes more to the internalisation of externalities than C2, since its minimum levels are higher. Without taking fuel tourism into account, C2+ is the only option that reduces pollutants in the air. Fuel tourism and the related pollutant emissions will be reduced in all three options (to the greatest extent in option C1 with 0.6 million tons emissions). In option C2+, fuel tourism could be reduced to a lower level than under C1 in the event that Germany and the United Kingdom (Member States presenting the highest gas oil taxation levels at the moment) decide to lower their commercial rate through the introduction of road user charges. From a budgetary point of view, the total budgetary impact (e.g. taking into account the reductions of fuel tourism) will be respectively -€ 38,3 billion (C1), -€ 46,8 billion (C2) and +€ 40,3 billion (C2+). **For all the above mentioned reasons, the Commission has decided to propose option C2+.**

LEGAL ELEMENTS OF THE PROPOSAL

- **Summary of the proposed action**

This new proposal will modify the Energy Tax Directive by increasing the minimum levels of taxation for gas oil set at Community level. From 2012 onwards the minimum level of taxation would be identical to the minimum level that will already be applicable to unleaded petrol (€ 359/1000 l), in order to reflect the fact that these two fuels are similarly detrimental to the environment. From 2014 onwards, the minimum level of taxation for gas oil would be increased (€ 380/1000 l), in order to avoid an important erosion in its value in real terms and to reduce distortions further.

Decoupling of the duty on commercial and non-commercial gas oil should be optional but not obligatory. For Member States which differentiate between commercial and non-commercial use of gas oil used as propellant, it should be clarified that the national level of taxation for non-commercial gas oil used as propellant shall not be less than the national level applied by that Member State to commercial gas oil. The same should apply to the relationship between unleaded petrol and commercial gas oil.

To make the mechanism clearer with an example, for a Member State already respecting the minimum levels applicable in 2010 and taxing commercial gas oil at € 340 per 1000 l, non-commercial gas oil at € 350 per 1000 l and unleaded petrol at € 370 per 1000 l, the proposal will have the following incidence:

– in 2012, the commercial gas oil rate will be raised to € 359 per 1000 l. The non-commercial gas oil rate must therefore be equal or greater than € 359 per 1000 l. Otherwise, non-commercial gas oil would be treated more favourably than commercial gas oil, whereas no environmental reason or distortion of competition justifies such favourable treatment. This increase will have no incidence on the taxation of unleaded petrol, since the new minimum level for commercial gas oil is from 2012 on the same minimum as for unleaded petrol.

– in 2014, the commercial gas oil minimum level will be increased to € 380 per 1000 l. The non-commercial gas oil rate will have to be equal to or greater than € 380 per

1000 l. The unleaded petrol rate will also have to be equal to or greater[14] than € 380 per 1000 l. Again, these changes are a consequence of the increase in the commercial gas oil rates. Non-commercial gas oil and unleaded petrol would otherwise be treated more favourably than commercial gas oil, whereas no environmental reason or distortion of competition justifies such favourable treatment.

Type of fuel	**2010**	**2012**	**2014**
Commercial gas oil	340	359	380
Non-commercial gas oil	350	≥ 359	≥ 380
Unleaded petrol	370	370	≥ 380

Furthermore, the text proposed would enable all Member States to reduce their taxation levels below their 1 January 2003 level, provided they respect the minimum level of taxation and provided they apply or introduce a system of road user charges, so that the overall tax burden remains broadly equivalent (cf. above description of option C2+). Thereby, more Member States will be able to decouple commercial and non-commercial gas oil by maintaining the non-commercial rate constant and decreasing their commercial rate.

Transitional periods granted in Directives 2003/96/EC, as amended by Directives 2004/74/EC and 2004/75/EC and in the Treaty concerning the accession of the Republic of Bulgaria and Romania to the European Union will be maintained and supplemented. In this regard, for Member States benefiting from transitional periods, increases should take place every two years, that is to say that the increase to € 359 will take place two years after the end of the transitional period within which € 330 had to be reached and the increase to € 380 will take place two years after the end of the previous two-year period.

Finally, the commercial gas oil tax rate would be applied at Member State level by means of a refund mechanism, the practicalities of which would be defined at Community level. A refund system seems the only practical way to avoid discrimination against non-established traders.

- **Legal basis**

Article 93 of the EC Treaty.

- **Subsidiarity principle**

The proposal does not fall under the exclusive competence of the Community. The subsidiarity principle therefore applies.

Article 93 of the Treaty laies down that the Council will adopt provisions for the harmonisation of legislation concerning excise duties to the extent that such harmonisation is necessary to ensure the establishment and the functioning of the internal market.

14 The expression commercial gas oil was chosen since it corresponds to the official designation in the relevant CN codes.

As stated in the impact assessment, enhanced approximation of tax rates through Community instruments would address the issue of unfair competition in an efficient way and would reduce distortions of competition. It would moreover contribute to reduce detours which are detrimental to the environment. This proposal, by increasing the minimum levels of taxation rate, will address these problems. Assuming Member States do not change their fiscal strategy[15], all but two countries would have excise duties for gas oil ranging from € 380 to € 420/1000 l by 2014, whereas all countries respecting the minimum level but Germany and the United Kingdom currently range from € 302 to 420.

By its nature, such action can only be conducted by the Union. As past and present oil shocks have shown, when erratic fluctuations in prices for crude oil take place, the differences between the taxes levied on gas oil fuel in different Member States become an even more sensitive issue. Unilateral measures by Member States risk causing a race to the minimum level in the fiscal area, which only serves to create even more difficulties in all Member States. The Commission and the Council of Ministers have repeatedly made clear that only common approaches would avoid fiscal disorder and distortions of competition.

Besides, a Community act is also needed in order to make the provisions of the Energy Tax Directive more flexible to allow decoupling to narrow rates differences, by amending Article 7(4) and thus opening the flexibility of compensation between tax and road charges to all Member States.

- **Proportionality principle**

The proposal complies with the proportionality principle.

Amending the Energy Tax Directive is best achieved by a new proposal for a Directive. A Directive gives the needed flexibility to the Member States in order to accommodate their needs and the needs of their economic operators.

Experience in several Member States indicates that managing the application of a specific tax rate for commercial gas oil is simple for both operators and public authorities when using a refunding mechanism. The latter is included in the proposal.

- **Choice of instruments**

Proposed instrument: Directive.

Other means would not be adequate because this area is already covered by a Directive. It is clear that co-regulation or self-regulation would not be efficient to tackle the problem. In this particular case, a Directive presents an appropriate implementation mechanism for the interested parties.

- **Budgetary implication**

The proposal has no implication for the Community budget.

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15 Only Member States having to increase their rates because of the new minimum will do so and remain close to the minimum.

2007/0023 (CNS)

Proposal for a

COUNCIL DIRECTIVE

amending Directive 2003/96/EC as regards the adjustment of special tax arrangements for gas oil used as motor fuel for commercial purposes and the coordination of taxation of unleaded petrol and gas oil used as motor fuel

(Text with EEA relevance)

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[16],

Having regard to the opinion of the European Parliament[17],

Having regard to the opinion of the European Economic and Social Committee[18],

Whereas:

(1) The White Paper of the Commission of 12 September 2001, European transport policy for 2010: time to decide[19], states that harmonization of national tax rates applied to gas oil used for commercial purposes would improve the sustainability of road transport.

(2) In the Communication from the Commission to the Council and the European Parliament - Keep Europe moving - Sustainable mobility for our continent - Mid-term review of the European Commission's 2001 Transport White Paper[20], the Commission states that transport policy pursues the objective of lowering CO_2 emissions and underlines that international environmental commitments, including those under the Kyoto Protocol, must be integrated into transport policy. Similar considerations apply to transport related tax policy.

(3) Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity[21] lays down the tax framework for fuels used as a propellant. It permits the decoupling of tax

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16 OJ C […], […], p. […].
17 OJ C , , p. .
18 OJ C , , p. .
19 COM(2001) 370.
20 COM(2006) 314.
21 OJ L 283, 31.10.2003, p. 51. Directive as last amended by Directive 2004/75/EC (OJ L 157, 30.4.2004, p. 100).

arrangements for fuels used for commercial purposes and for other purposes under certain conditions.

(4) While fuel represents a large proportion of the running costs of a road haulage business, wide divergences in the level of taxation applied to gas oil by the Member States can be observed. These divergences lead to fuel tourism and distortions of competition. Enhanced approximation at Community level of the level of taxation applicable to commercial gas oil would address the issue of unfair competition in an efficient manner and would eventually result in better functioning of the internal market and a reduction of damage to the environment.

(5) The impact assessment carried out by the Commission showed that the best way to implement enhanced approximation of the levels of taxation of commercial gas oil consists in an increase of the minimum level for commercial gas oil, given that it combines the reduction of distortions of competition and resulting fuel tourism as well as of overall consumption. It is therefore appropriate to provide that from 2012 the minimum level of taxation for gas oil should equal the minimum level of taxation applicable to unleaded petrol, which reflects the fact that these two fuels are similarly detrimental to the environment. From 2014 the minimum level of taxation should be € 380 per 1000 l, in order to contribute to maintain the minimum level constant in real terms and to reduce further distortions of competition and environmental damage.

(6) From an environmental point of view, it appears appropriate, at this stage, to set the same minimum levels of taxation for unleaded petrol and for gas oil. There are no valid reasons to fix national levels of taxation for non-commercial gas oil and unleaded petrol below the national level applicable to commercial gas oil. For Member States which differentiate between commercial and non-commercial use of gas oil used as propellant, it should therefore be clarified that the national level of taxation for non-commercial gas oil used as propellant shall not be less than the national level applied by that Member State to commercial gas oil. The same should apply between unleaded petrol and commercial gas oil used as propellant.

(7) Certain Member States have been granted transitional periods in order to smoothly adapt to the levels of taxation set out in Directive 2003/96/CE. For the same reasons, these transitional periods should be supplemented with regard to this Directive.

(8) To the extent this Directive affects the levels of taxation in Member States and, as a result, existing State aid measures, this Directive does not release the Member States from the necessity, where applicable, to adjust their national measures and to notify the change to the Commission in accordance with the State aid rules.

(9) Differentiation between gas oil tax rates for commercial and non-commercial gas oil should be implemented through a refund mechanism which should be non-discriminatory. A set of common rules applicable in the matter should be fixed at Community level, in particular concerning cross-border refunding procedures.

(10) The possibility for Member States to fix a reduced rate on gas oil for commercial purposes below the national level in force on 1 January 2003, when introducing or applying a system of road user charges which results in a broadly equivalent overall tax burden, should be extended. To this end and in the light of experience, it is appropriate to no longer maintain the requirement whereby the national level of

taxation in force on 1 January 2003 for gas oil used as propellant must be at least twice as high as the minimum level of taxation applicable on 1 January 2004.

(11) Since the objectives of the proposed action, namely to enhance approximation of taxation applicable to commercial gas oil in order to reduce the serious distortions of competition which affect haulage markets so as to achieve better the common transport policy objectives and to ensure a better protection of the environment, cannot be sufficiently achieved by the Member States and can therefore, by reason of their European dimension, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary to achieve those objectives.

(12) Directive 2003/96/EC should therefore be amended accordingly,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 2003/96/EC is amended as follows:

(1) Article 7 is amended as follows:

(a) paragraphs 1 and 2 are replaced by the following:

“1. As from 1 January 2004, 1 January 2010, 1 January 2012 and 1 January 2014 the minimum levels of taxation applicable to motor fuels shall be fixed as set out in Annex I Table A.

2. Member States may differentiate between commercial and non-commercial use of gas oil used as propellant, provided that the Community minimum levels are observed, and the rate for commercial gas oil used as propellant does not fall below the national level of taxation in force on 1 January 2003.

The national levels of taxation applicable in a Member State for non-commercial gas oil and unleaded petrol used as propellant shall not be less than the national level applied by that Member State for commercial gas oil.”

(b) Paragraph 4 is replaced by the following:

“4 Member States which apply or introduce a system of road user charges to motor vehicles using commercial gas oil as defined in paragraph 3, may apply a reduced rate to such gas oil that goes below the national level of taxation in force on 1 January 2003, as long as the overall tax burden remains broadly equivalent, and provided that the Community minimum level applicable to gas oil is observed.”

(c) The following paragraph 5 is added:

“5. Member States shall ensure that the differentiated levels of taxation of commercial and non-commercial gas oil are implemented by means of a non-discriminatory refund mechanism. This mechanism shall ensure that operators of all Member States have access to refunding under conditions which are equal, transparent and simple from an administrative point of view.

The Commission shall establish common rules as to the mechanisms referred to in the first subparagraph, in accordance with the procedure referred to in Article 27(2).”

(2) Article 18 is amended as follows:

(a) In paragraph 3, the first sentence is replaced by the following:

“The Kingdom of Spain may apply a transitional period until 1 January 2007 to adjust its national level of taxation on gas oil used as propellant to the new minimum level of EUR 302, until 1 January 2012 to reach EUR 330, until 1 January 2014 to reach EUR 359 and until 1 January 2016 to reach EUR 380.”

(b) In paragraph 4, the first sentence is replaced by the following:

“The Republic of Austria may apply a transitional period until 1 January 2007 to adjust its national level of taxation on gas oil used as propellant to the new minimum level of EUR 302, until 1 January 2012 to reach EUR 330, until 1 January 2014 to reach EUR 359 and until 1 January 2016 to reach EUR 380.”

(c) In paragraph 5, the first sentence is replaced by the following:

“The Kingdom of Belgium may apply a transitional period until 1 January 2007 to adjust its national level of taxation on gas oil used as propellant to the new minimum level of EUR 302, until 1 January 2012 to reach EUR 330, until 1 January 2014 to reach EUR 359 and until 1 January 2016 to reach EUR 380.”

(d) In paragraph 6, the first sentence is replaced by the following:

“The Grand Duchy of Luxembourg may apply a transitional period until 1 January 2009 to adjust its national level of taxation on gas oil used as propellant to the new minimum level of EUR 302, until 1 January 2012 to reach EUR 330, until 1 January 2014 to reach EUR 359 and until 1 January 2016 to reach EUR 380.”

(e) In paragraph 7, in the second sub-paragraph, the first sentence is replaced by the following:

“The Portuguese Republic may apply a transitional period until 1 January 2009 to adjust its national level of taxation on gas oil used as propellant to the new minimum level of EUR 302, until 1 January 2012 to reach EUR 330, until 1 January 2014 to reach EUR 359 and until 1 January 2016 to reach EUR 380.”

(f) In paragraph 8, in the third sub-paragraph, the first sentence is replaced by the following:

“The Hellenic Republic 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, until 1 January 2012 to reach EUR 330, until 1 January 2014 to reach EUR 359 and until 1 January 2016 to reach EUR 380.”

(3) Article 18a is amended as follows:

(a) In paragraph 5, the first sentence is replaced by the following:

"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 1000 l, until 1 January 2013 to reach EUR 330 and, for gas oil used as propellant, until 1 January 2015 to reach EUR 359 and until 1 January 2017 to reach EUR 380."

(b) In paragraph 6, the first sentence is replaced by the following:

"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 1000 l, until 1 January 2013 to reach EUR 330 and, for gas oil used as propellant, until 1 January 2015 to reach EUR 359 and until 1 January 2017 to reach EUR 380."

(c) In paragraph 9, in the second sub-paragraph, the first sentence is replaced by the following:

"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 1000 l, until 1 January 2012 to reach EUR 330, until 1 January 2014 to reach EUR 359 and until 1 January 2016 to reach EUR 380."

(4) The following Article 18c is added:

"Article 18c

Without prejudice to the derogations from Article 7 laid down in the Treaty concerning the accession of the Republic of Bulgaria and Romania to the European Union.Those Member States may apply a further transitional period for gas oil used as propellant until 1 January 2015 to reach EUR 359 and until 1 January 2017 to reach EUR 380."

(5) In Annex I, table A, the rows relating to unleaded petrol and gas oil are replaced by the following:

	1 January 2004	1 January 2010	1 January 2012	1 January 2014
Unleaded petrol (in euros per 1 000 l) CN Codes 2710 11 31, 2710 11 41, 2710 11 45 and 2710 11 49	359	359	359	380
Gas oil (in euros per 1 000 l) CN codes 2710 19 41 to 2710 19 49	302	330	359	380

Article 2

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 2007 at the latest. 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 these provisions, they shall contain a reference to this Directive or shall be accompanied by such 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 the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 4

This Directive is addressed to the Member States.

Done at Brussels,

For the Council
The President