

II

(Preparatory Acts)

COMMISSION

Proposal for a Council directive introducing a tax on carbon dioxide emissions and energy

(92/C 196/01)

COM(92) 226 final

(Submitted by the Commission on 2 June 1992)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 99 and 130S thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the Economic and Social Committee,

Whereas the greenhouse effect is a problem that should be resolved in an efficient and coherent manner;

Whereas the establishment and functioning of the internal market necessitates free movement of goods, including those subject to specific duties;

Whereas a number of Member States have already introduced, or are planning to introduce, taxes on carbon dioxide emissions and the use of energy; Whereas a harmonized approach is needed to ensure the functioning of the internal market;

Whereas Article 1 (1) *in fine* of Directive 92/12/EEC of 25 February 1992⁽¹⁾ excludes from the arrangements laid down by that Directive taxes established by the Community;

Whereas the Community's action programmes for the environment adopted in 1973⁽²⁾, 1977⁽³⁾, 1983⁽⁴⁾, 1987⁽⁵⁾ and 1992⁽⁶⁾ stress the importance of reducing and preventing air pollution; whereas the 1987 to 1992 environmental action programme stresses the importance of concentrating Community action on the priority area of reducing air pollution at source;

Whereas, at its meeting in Dublin in June 1990, the European Council pressed for the adoption, at the earliest possible opportunity, of targets and strategies for limiting emissions of greenhouse gases; whereas carbon dioxide emissions are the major component of such gases;

Whereas, at its meeting on 29 October 1990, the Council concluded that aggregate carbon dioxide emissions should be stabilized at 1990 levels by the year 2000;

Whereas the global dimension of the greenhouse effect has been recognized; Whereas this phenomenon should be tackled at that level;

Whereas the introduction of a carbon dioxide/energy tax is an essential element of an overall strategy for improving the

(2) OJ No C 112, 20. 12. 1973, p. 1.

(3) OJ No C 139, 13. 6. 1977, p. 1.

(4) OJ No C 46, 17. 2. 1983, p. 1.

(5) OJ No C 328, 7. 12. 1987, p. 1.

(6) COM (92) 23 final, 30 March 1992.

(1) OJ No L 76, 23. 3. 1992, p. 1.

efficient use of energy and bringing about changes in the use of forms of energy in favour of less-polluting sources;

Whereas, in order to safeguard the competitiveness of Community industry, the tax arrangements cannot be applied in the Member States until such time as other member countries of the OECD have brought in a similar tax or measures having an equivalent financial impact;

Whereas, since the tax is to be established at Community level, it is necessary to determine the territory to which it will apply as well as the system of taxation for the products covered, the rules relating to the holding and movement of such products, and the tax rates and exemptions or reduced rates at Community level;

Whereas use of the existing administrative structures and application of the definition of territory applicable in the case of harmonized excise duties will ease the burden on the administrations and firms without giving rise to any distortions of competition;

Whereas the tax must be levied on fossil energy sources as regards its objective of limiting carbon dioxide emissions and on all forms of energy as regards its objective of promoting efficient use of energy; whereas use of energy sources as feedstocks should be excluded; whereas, however, as regards the taxation of energy as such, steps should be taken to avoid distortions between various energy sources arising in connection with the extraction process; whereas the arrangements should provide for appropriate treatment of electricity;

Whereas, in order to promote the use of alternative sources of energy, renewables should be excluded from the scope of the tax;

Whereas, in order to achieve these two objectives, the tax should be based on the energy content and on the level of carbon dioxide emissions from the products used;

Whereas, in order to ensure that the tax yield accrues to the Member States without impeding the free movement of the products subject to the tax and without giving rise to any distortions of competition, harmonized monitoring arrangements must be introduced; whereas such arrangements exist for products already subject to excise duty; whereas the Commission should adopt the appropriate measures for monitoring the other products while ensuring, however, that such monitoring does not impede their free movement;

Whereas, in order to allow economic operators to adapt in a flexible manner to the new conditions created by the tax, the rates must be fixed at a tolerable level at the outset and raised gradually to the desired level;

Whereas, subject to certain limits and conditions, the Member states should, in exceptional circumstances, qualify for temporary derogations;

Whereas, in order to safeguard the competitiveness of Community industry, it is appropriate to grant conditional exemptions from, or reductions in, the tax to energy-intensive firms in so far as their competitors in third countries are not encumbered with a similar tax or financial burden; whereas such exemptions and reductions must be authorized subject to the conditions laid down by Community law and in compliance with the Community's international commitments;

Whereas provision should be made in this connection for a system of tax incentives for investment in energy saving or carbon dioxide abatement; whereas the conditions for such incentives must be fixed uniformly in order to ensure that they do not display the characteristics of aid likely to distort the conditions of competition;

Whereas a committee needs to be set up in order to ensure that the provisions of this Directive are applied in a coordinated manner;

Whereas it is essential that introduction of the new tax should not result in an increase in the overall tax burden; whereas compliance with the principle of tax neutrality will help to modernize tax systems by encouraging behaviour conducive to greater protection of the environment; whereas tax neutrality will cushion the effects on inflation and growth of introducing the tax;

Whereas, however, determination of the arrangements for ensuring tax neutrality is a matter for each Member State,

HAS ADOPTED THIS DIRECTIVE:

TITLE I

General Provisions

Article 1

1. The purpose of this Directive is to provide for the harmonized introduction in the Member States of a specific tax on the products specified in Article 3 and to be levied on carbon dioxide emissions and energy content. The rate of the tax shall be in addition to the rates applied by the Member States to the products concerned by Council

Directive of on the harmonization of the structures of excise duties on mineral oils ⁽¹⁾ and Directive ... of ... on the approximation of the rates of excise duties on mineral oils ⁽²⁾.

2. Member States shall take the measures necessary to collect for themselves the tax referred to in paragraph 1 and to monitor its application.

Application of the tax arrangements provided for in paragraph 1 shall be conditional on the introduction by other member countries of the OECD of a similar tax or of measures having a financial impact equivalent to those provided for in this Directive. The Council, acting by qualified majority on a proposal from the Commission, shall fix the date on which the tax arrangements are to take effect.

Article 2

1. This Directive shall apply in the territory of the Community as defined, for each Member State, by the Treaty establishing the European Economic Community, and in particular Article 227 thereof, except for the following national territories:

- in the case of the Federal Republic of Germany: the Island of Heligoland and the territory of Büsingen,
- in the case of the Italian Republic: Livigno, Campione d'Italia and the Italian waters of Lake Lugano,
- in the case of the Kingdom of Spain: Ceuta and Melilla.

2. By way of derogation from paragraph 1, this Directive shall not apply to the Canary Islands, Madeira or the Azores. However, the Kingdom of Spain or the Portuguese Republic may give notice, by means of a declaration, that this Directive applies to those territories in respect of all or some of the products specified in Article 3 as from the first day of the second month following deposit of that declaration.

3. By way of derogation from paragraph 1, this Directive shall not apply to the overseas departments of the French Republic. However, the French Republic may give notice, by means of a declaration, that this Directive applies to those territories, subject to measures to adapt to their extreme remoteness, from the first day of the second month following deposit of the declaration.

4. The provisions of this Directive shall not prevent Greece from maintaining the specific status granted to Mount Athos and guaranteed by Article 105 of the Greek Constitution.

5. If the Commission considers that the exclusions provided for in paragraphs 1 to 3 are no longer justified, particularly in terms of fair competition, it shall present appropriate proposals to the Council.

Article 3

1. The tax referred to in Article 1 (1) shall be levied on the products specified below and intended for use as heating fuels or as motor fuels:

- (a) coal, lignite, peat and their derivatives (coke, gas, tar, etc.), with the exception of blast-furnace gas, falling within CN codes 2701 to 2706;
- (b) natural gas falling within CN codes 2711 21 00 to 2711 29 00;
- (c) mineral oils; the following shall be considered as such for the purposes of this Article:
 - products falling within CN codes 2707 10, 2707 20, 2707 30, 2707 50, 2707 91 00 and 2707 99 (with the exclusion of CN codes 2707 99 30, 2707 99 50 and 2707 99 70),
 - products falling within CN code 2709,
 - products falling within CN code 2710,
 - liquefied petroleum gases falling within CN codes 2711 12 11 to 2711 19 00,
 - products falling within CN codes 2712 20 00, 2712 90 31, 2712 90 33, 2712 90 39 and 2712 90 90,
 - products falling within CN codes 2712 10 and 2713, with the exception of resinous products, used bleaching earth, acid residues and basic residues,
 - products falling within CN code 2715,
 - products falling within CN code 2901 and CN codes 2902 11 00, 2902 19 90, 2902 20, 2902 30, 2902 41 00, 2901 42 00, 2902 43 00 and 2902 44,
 - products falling within CN codes 3403 11 00 and 3403 19,
 - products falling within CN code 3811,
 - products falling within CN code 3817.

2. The tax referred to in Article 1 (1) shall also be levied on:

- (a) ethyl and methyl alcohol falling within CN codes 2207 and 2905 where obtained by distillation from products specified in paragraph 1 and intended for use as heating fuels or as motor fuels. The tax shall also be levied on any other product intended for use, offered for sale or used as motor fuel or as an additive or extender in motor fuels, with the exception of those specified in paragraph 3 below;

⁽¹⁾ OJ No L ...

⁽²⁾ OJ No L ...

(b) electricity falling within CN code 2716, and heat, generated:

- in hydroelectric installations with a capacity of over 10 MW, or
- using products falling within CN codes 2612, 2844 10 to 2844 50 and 2845 10.

3. The tax referred to in Article 1 (1) shall not be levied on:

- fuel wood and wood charcoal falling within CN codes 4401 and 4402, and products resulting from the distillation or processing of wood,
- any product of agricultural or vegetable origin obtained directly or after chemical modification, and in particular alcohols falling within CN codes 2207 and 2905 and crude or esterified vegetable oils falling within CN codes 1507 to 1518.

4. Products specified in paragraphs 1 and 2 and used in metallurgical or electrolytic processes shall be regarded as being intended for use as heating fuels.

TITLE II

Chargeable event and chargeability

Article 4

1. The chargeable event for the tax shall be the extraction or manufacture of the products specified in Article 3 on the territory of the Community, as defined in Article 2, or their importation into that territory.

2. Member States shall not be obliged to treat as 'extraction or manufacture of products':

- (a) operations during which small quantities of products specified in Article 3 (1) and (2) (a) are obtained incidentally;
- (b) the operation consisting of mixing in a tax warehouse products specified in Article 3 (1) and (2) (a) with other products or substances specified in that same Article provided that:
 - the tax referred to in Article 1 (1) and chargeable on the basic substances has been paid previously, in cases where the mixture obtained is intended for use as heating fuel or as motor fuel,
 - the amount paid is not less than the amount of the tax referred to in Article 1 (1) that would be chargeable on the mixture intended for use as heating fuel or as motor fuel.

3. The consumption of products specified in Article 3 on the site of an establishment in which these products or some of them are obtained shall not be considered as a

chargeable event for the tax referred to in Article 1 (1), except where such consumption is for purposes not related to that production.

Article 5

1. The tax referred to in Article 1 (1) shall become chargeable at the time of release for consumption or when shortages are recorded.

Release for consumption of products subject to the tax means:

- (a) any departure, including irregular departure, from a suspension arrangement;
- (b) any extraction of manufacture, including irregular extraction or manufacture, of those products outside a suspension arrangement;
- (c) any importation, including irregular importation, of those products where they have not been placed under a suspension arrangement.

2. The chargeability conditions and rate of the tax referred to in Article 1 (1) shall be those in force on the date on which the tax becomes chargeable in the Member State where release for consumption takes place or shortages are recorded.

The tax shall be levied and collected according to the procedure laid down by each Member State, it being understood that Member States shall apply the same procedures for levying and collection to national products and to those from other Member States.

TITLE III

Persons liable for payment of the tax holding and movement of products

Article 6

The tax referred to in Article 1 (1) shall be payable by persons who carry out a taxable transaction within the meaning of Article 5.

Article 7

1. The production, holding, movement and monitoring of the products specified in Article 3 (1) and (2) (a) shall be determined in accordance with the provisions of Council Directive 92/12/EEC of 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products.

2. In the case of electricity falling within CN code 2716 and generated using products or in installations specified in

Article 3, the Commission shall, where necessary, determine the appropriate measures relating to trade between Member States and with third countries in accordance with the procedure provided for in Article 13.

3. (a) Invoices issued by electricity-generating enterprises shall indicate the amount of tax per kW/h supplied and the total amount of tax payable on the inputs used for the electricity supplies invoiced; these amounts of tax shall be indicated on invoices issued by electricity-distributing enterprises.

(b) The amounts of tax shown on invoices shall be the same per kW/h for all the customers of electricity-producing or electricity-distributing enterprises over a given period.

4. Invoices issued in respect of supplies of the primary energy sources specified in Article 3 (1) and (2) (a) shall indicate the unit rate of the tax applied and the amount payable; such information shall, where appropriate, be given on a pro rata basis on invoices issued in respect of subsequent supplies.

TITLE IV

Determination of the tax base

Article 8

The tax base shall be:

- for the energy component of the tax: the energy content of the products specified in Article 3 (1) and (2). However, electricity as specified in Article 3 (2) (b) and that generated using the products referred to above shall be taxed on the basis of the electricity generated, the said products used being exempt from the tax,
- for the carbon dioxide component of the tax: the volume of carbon dioxide emitted on combustion in the presence of excess oxygen of the products specified in Article 3 (1) and (2) (a).

TITLE V

Rates

Article 9

1. The rates of the tax referred to in Article 1 (1) shall be determined as follows:

(a) for the products specified in Article 3 (1) (a) and (b) and (2) (a), with the exception of the products specified at (b) below:

- ECU 2,81 per tonne of carbon dioxide emitted on combustion in the presence of excess oxygen, and
- ECU 0,21 per gigajoule of energy content. However electricity as specified in Article 3 (2) (b) and that generated using the products specified in Article 3 (1) and (2) (a) shall be taxed at the rate of ECU 2,1 per MW/h, with the exception of electricity generated by the hydroelectric installations specified in the first indent of Article 3 (2) (b), which shall be taxed at the rate of ECU 0,76 per MW/h.

In the interests of simplifying application of the tax and effective monitoring, Member States may, in the case of coal, lignite, peat and natural gas, apply a simplified tax schedule based on bands each equivalent to 5 % of the carbon content convertible into carbon dioxide on combustion in the presence of excess oxygen and to 1,5 gigajoule of energy content of the crude products per tonne of solid fossil energy sources or liquefied petroleum gas or per 1 000 m³ of non-liquefied gas;

(b) for mineral oils:

- leaded or unleaded petrol falling within CN codes 2707 and 2710: ECU 13,46 per 1 000 l;
- diesel and gas oil as defined in additional note 1 (f) of CN Chapter 27: ECU 15,42 per 1 000 l;
- kerosene and aviation fuel as defined in additional note 1 (d) of CN Chapter 27: ECU 14,40 per 1 000 l;
- heavy fuel as defined in additional note 1 (g) of CN Chapter 27: ECU 17,21 per 1 000 kg;
- petroleum coke, etc. falling within CN codes 2713 11 00 to 2713 90 90: ECU 15,36 per 1 000 kg;
- liquefied petroleum gases falling within CN codes 2711 12 11 to 2711 19 00: ECU 0,39 per gigajoule;

(c) Member States may apply a higher rate than that provided for at (a) and (b).

2. The value in national currency of the ecu to be taken into consideration in applying this Directive shall be fixed once a year. The rates to be applied shall be those obtained on the first working day in October with effect from 1 January of the following year.

Member States may round the amounts in national currency resulting from conversion of the amounts in ecu referred to in the first paragraph in accordance with their own rules provided that the rounding operation does not result in an amount that is higher or lower than the conversion value by more than 5 %.

3. For the first time at the end of the 12th month following the date specified in Article 1 (2) and at the end of each of the ensuing six periods of 12 months, the Commission shall, in accordance with the procedure provided for in Article 13, raise the rate of the tax by one third of the amount fixed in paragraph 1.

4. Exceptionally, the Council, acting unanimously on a proposal from the Commission, may, if so requested and on the basis of information obtained by it in connection with the Council Decision for the monitoring mechanism of Community CO² and other greenhouse gas emissions⁽¹⁾ and additional information provided in this respect, authorize one or more Member States to suspend temporarily the application of the tax in order to take account of the particular situation in Member States, developments in the economic situation, and progress made in achieving the objective of stabilizing carbon dioxide emissions.

5. Products subject to the tax referred to in Article 1 (1) shall be exempted from the tax where they are intended:

- for delivery in the context of diplomatic or consular relations,
- for international organizations recognized as such by the public authorities of the host Member State and by members of such organizations, within the limits and under the conditions laid down by the international conventions establishing such organizations or by headquarters agreements,
- for the armed forces of any State party to the North Atlantic Treaty other than the Member State within which the tax is chargeable as well as for the armed forces referred to in Article 1 of Decision 90/640/EEC⁽²⁾, for the use of those forces or for the civilian staff accompanying them,
- for consumption under an agreement concluded with third countries or international organizations provided that such an agreement is allowed or authorized with regard to exemption from VAT.

These exemptions shall be subject to the conditions and limitations laid down by the Commission in accordance with the procedure provided for in Article 13. Eligibility for exemption may be granted in accordance with a procedure for reimbursing the tax.

Article 10

In the case of firms with a high energy consumption that are seriously disadvantaged on account of an increase in imports from third countries which are not specified in Article 1 (2) and which have not introduced a similar tax or measures having an equivalent financial impact, the Commission may authorize Member States, after notification of the corresponding plans, to grant such firms:

- (i) a graduated reduction in the tax payable under Article 9 or an equivalent refund where the total energy cost, inclusive of all taxes except VAT, expressed as a percentage of the value added as defined in Article 2 of Directive 67/227/EEC⁽³⁾ generated in respect of the products obtained using the energy taken into account in determining the above cost, amounts to at least 8 %;
- (ii) a full and temporary exemption from the tax referred to in Article 1 (1) or an equivalent refund provided that the firms have made substantial efforts to save energy or to reduce carbon dioxide emissions.

The conditions for granting the tax reductions or exemptions referred to at (i) and (ii) above shall comply with the rules of Community law and with the Community's international commitments.

Article 11

Member States shall reduce the amounts of tax payable or, where appropriate, grant equivalent refunds to the extent of new investment expenditure incurred by a firm during a given reference period in improving the efficient use of energy or in limiting carbon dioxide emissions. The nature and proportion of the investment expenditure taken into consideration and the reference period shall be determined by the Commission in accordance with the procedure provided for in Article 13. Where the amount of such expenditure exceeds the amount of tax payable or paid, a tax credit or a corresponding entitlement shall be carried over to subsequent years.

⁽¹⁾ COM (92)181 final of 1. June 1992.

⁽²⁾ OJ No L 349, 13. 12. 1990, p. 19.

⁽³⁾ OJ No 71, 14. 4. 1967, p. 1301/67.

Article 12

The arrangements for granting tax exemptions, reductions or refunds referred to in Article 10 and the arrangements for tax incentives referred to in Article 11 shall be reviewed every three years.

Before expiry of each three-year period, and for the first time before expiry of the third year of application of the tax, the Commission shall present to the Council a report on the operation of the system accompanied, where appropriate, by a proposal for amending this Directive.

TITLE VI

Committee on the Carbon Dioxide/Energy Tax*Article 13*

1. The Commission shall be assisted by a Committee on the Carbon Dioxide/Energy Tax, hereinafter referred to as the 'Committee'. The Committee shall be composed of representatives of the Member States and chaired by a Commission representative.

2. Without prejudice to the matters falling within the remit of the Committee provided for in Directive 92/12/EEC, the measures necessary for the application of the provisions of this Directive shall be adopted in accordance with the procedure laid down in paragraphs 3 and 4.

3. The Commission representative shall submit to the Committee a draft of the measures to be taken. The Committee shall deliver its opinion on the draft within a time limit which the Chairman may lay down according to the urgency of the matter. It shall take its decision by the majority laid down in Article 148 (2) of the Treaty. The Chairman and the Commission representative shall not vote.

4. The Commission shall adopt the intended measures where they are in accordance with the Committee's opinion. Where the intended measures are not in accordance with the Committee's opinion or in the absence of any opinion, the Commission shall forthwith place before the Council a proposal relating to the measures to be taken. The Council shall act by qualified majority.

If, on expiry of a period of three months from the date on which the matter was referred to it, the Council has not adopted any measures, the Commission shall adopt the proposed measures.

5. In addition to the measures referred to in paragraph 2, the Committee shall examine the matters raised by its

Chairman, either on his own initiative or at the request of the representative of a Member State, and concerning the application of the Community provisions on the tax referred to in Article 1 (1).

TITLE VII

Mutual assistance*Article 14*

1. A fifth indent shall be added to Article 1 (1) of Directive 77/799/EEC⁽¹⁾, as last amended by Directive 92/12/EEC:

— the carbon dioxide/energy tax introduced by Council Directive 92/.../EEC⁽¹⁾.

(¹) OJ No L'

2. A fourth indent shall be added to Article 3 (f) of Directive 76/308/EEC⁽²⁾, as last amended by Directive 92/.../EEC⁽³⁾:

— the carbon dioxide/energy tax introduced by Council Directive 92/.../EEC⁽¹⁾.

(¹) OJ No L'

TITLE VIII

General tax neutrality*Article 15*

1. Member States shall:

- notify the Commission, when introducing the tax referred to in Article 1 (1), of the steps they have taken to ensure tax neutrality,
- inform the Commission each year of the conditions under which tax neutrality has been achieved.

2. The measures taken by the Member States to ensure tax neutrality shall comply with Community law.

(¹) OJ No L 336, 27. 12. 1977, p. 15.

(²) OJ No L 73, 19. 3. 1976, p. 18.

(³) OJ No L ...

TITLE IX

Final provisions*Article 16*

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive on 1 January 1993.

When Member States adopt them, such measures shall contain a reference to this Directive or shall be

accompanied by such reference on the occasion of their official publication. The arrangements for making such a reference shall be laid down by Member States.

2. Member States shall inform the Commission of the main provisions of national law which they adopt to comply with this Directive.

Article 17

This Directive is addressed to the Member States.
