

Council Directive 2004/75/EC of 29.4.2004 amending Directive 2003/96/EC as regards the possibility for Cyprus to apply, in respect of energy products and electricity, temporary exemptions or reductions in the levels of taxation

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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,

Having regard to the opinion of the European Parliament⁽¹⁾

Having regard to the opinion of the European Economic and Social Committee⁽²⁾,

Whereas:

- (1) Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity⁽³⁾ replaced, with effect from 1 January 2004, Council Directive 92/81/EEC of 19 October 1992 on the harmonisation of the structures of excise duties on mineral oils⁽⁴⁾ and Council Directive 92/82/EEC of 19 October 1992 on the approximation of the rates of excise duties on mineral oils⁽⁵⁾. It defines the fiscal structures and the levels of taxation to be imposed on energy products and electricity.
- (2) The minimum rates set by Directive 2003/96/EC are liable to create serious economic and social difficulties for certain Member States, among which Cyprus, in view of the comparatively low level of excise duties previously applied, the ongoing economic transition, their relatively low income levels and their limited ability to offset that additional tax burden by reducing other taxes. In particular the price increases brought about by application of the minimum rates set by Directive 2003/96/EC are likely to have adverse effect on their citizens and national economies, creating for instance an unbearable burden for small and medium-sized enterprises.
- (3) Cyprus should therefore be permitted, on a temporary basis, to apply additional exemptions or reduced levels of taxation, where it will not be detrimental to the proper functioning of the internal market and will not result in the distortion of competition. Moreover, consistent with the principles in accordance with which transitional periods were originally granted under Directive 2003/96/EC, any such measures should be designed to bring about a progressive alignment with the applicable Community minimum rates.

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- (4) This Directive does not prejudice the outcome of any procedures relating to distortions of the operation of the single market that may be undertaken, in particular under Articles 87 and 88 of the Treaty. It does not override the requirement for Member States to notify instances of potential State aid to the Commission under Article 88 of the Treaty.
- (5) The wording of Article 30 of Directive 2003/96/EC should be clarified.
- (6) The provisions in this Directive must apply from the date of Accession of the new Member States. The urgency of the matter justifies an exception to the six-week period provided for in point I.3. of the Protocol on the role of national parliaments in the European Union.
- (7) Directive 2003/96/EC should therefore be amended accordingly,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 2003/96/EC is hereby amended as follows:

- (1) The following Article shall be inserted:

Article 18b

1 Notwithstanding the periods set out in paragraph 2 and provided that this does not significantly distort competition, Member States with difficulties in implementing the new minimum levels of taxation shall be allowed a transitional period until 1 January 2007, particularly in order to avoid jeopardising price stability.

2 The Republic of Cyprus may apply a transitional period until 1 January 2008 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 and until 1 January 2010 to reach EUR 330. However, the level of taxation on gas oil and kerosene used as propellant shall be not less than EUR 245 per 1000 l as from 1 May 2004.

The Republic of Cyprus may apply a transitional period until 1 January 2010 to adjust its national level of taxation on unleaded petrol used as propellant to the new minimum level of EUR 359 per 1000 l. However, the level of taxation on unleaded petrol shall be not less than EUR 287 per 1000 l as from 1 May 2004.

3 Within the transitional periods established, Member States shall progressively reduce their respective gaps with respect to the new minimum levels of taxation. However, where the difference between the national level and the minimum level does not exceed 3% of that minimum level, the Member State concerned may wait until the end of the period to adjust its national level.

- (2) In Article 30 the following paragraph shall be added:

References to the repealed Directives shall be construed as references to this Directive.

Article 2

1 Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive from the date of entry into force of this Directive. They shall forthwith communicate to the Commission the text of those measures and a correlation table between those measures and this Directive.

When Member States adopt these measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by the Member States.

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 subject to, and as from the date of, the entry into force of the Treaty of Accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia. It shall be transposed by the Member States into their national law as of the same date. They shall forthwith inform the Commission thereof.

Article 4

This Directive is addressed to the Member States.

Done at Luxembourg, 29.4.2004

For the Council

The President

M. MCDOWELL

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- (1) Opinion delivered on 20 April 2004 (not yet published in the Official Journal).
- (2) Opinion delivered on 31 March 2004 (not yet published in the Official Journal).
- (3) [OJ L 283, 31.10.2003, p. 51.](#)
- (4) [OJ L 316, 31.10.1992, p. 12.](#) Directive as last amended by Directive 2003/96/EC.
- (5) [OJ L 316, 31.10.1992, p. 19.](#) Directive as last amended by Directive 2003/96/EC.