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1. -----IND- 2006 0569 D-- EN- ----- 20061108 --- --- PROJET
Draft Act introducing a biofuel quota by amending the Federal Pollution Control Act and amending the energy and electricity tax regulations
(Biofuel Quota Act (German designation: BioKraftQuG)^{1 2}

The *Bundestag* has passed the following Act:

Article 1
Amending the Energy Tax Act

The Energy Tax Act of 15 July 2006 (Federal Law Gazette I p. 1534) is amended as follows:

1. Section 2(3) sentence 1 point 1 is worded as follows:

- “1. for 1 000 l of correctly marked gas oils falling within CN codes 2710 19 41 to 2710 19 49
- | | |
|---|-------------|
| a) with a sulphur content greater than 50 mg/kg | |
| up to 31 December 2008 | EUR 61.35, |
| from 1 January 2009 | EUR 76.35, |
| b) with a sulphur content not greater than 50 mg/kg | EUR 61.35,” |

2. Section 37(2) sentence 1 point 4 is worded as follows:

- “4. as fuel oil for processes and methods in accordance with Section 51,”

3. Section 50 is worded as follows:

“Section 50
Tax relief on biofuels and bioheating fuels

1 This Act serves to further transpose the following Directives:

– Directive 2003/30/EC of the European Parliament and of the Council of 8 May 2003 on the promotion of the use of biofuels or other renewable fuels for transport (OJ L 123 p. 42) and Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity (OJ L 283 p. 51), most recently amended by Council Directive 2004/75/EC of 29 April 2004 (OJ L 157 p. 100).

2 The obligations arising from Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society services (OJ L 104 p. 37), as

(1) On application, the taxpayer is granted tax relief

1. in respect of biofuels where proof can be furnished that duty has been paid on them at the rates laid down in Section 2(1), and which are not mixed with other energy products, with the exception of biofuels or additives falling within CN code 3811,
2. in respect of energy products where proof can be furnished that duty has been paid on them at the rates laid down in Section 2(1), and which constitute biofuels that are particularly eligible for favourable tax treatment pursuant to paragraph 5 point 3,
3. in respect of energy products where proof can be furnished that duty has been paid on them at the rates laid down in Section 2(1), and which constitute, or which contain, biofuels that are particularly eligible for favourable tax treatment pursuant to paragraph 5 point 1 or 2,
4. in respect of energy products where proof can be furnished that duty has been paid on them at the rates laid down in Section 2(2), and which constitute, or which contain, biogas (biomethane) produced by fermentation or synthetically from biomass and to natural gas quality and satisfying the requirements of Section 5 of the Tenth Order implementing the Federal Pollution Control Act (Order on the characteristics and quality marking of fuels), as amended,
5. in respect of energy products where proof can be furnished that duty has been paid on them at the rates laid down in Section 2(3), and which constitute, or which contain, biofuels or bioheating fuels.

Save as provided for in paragraphs 2 and 3, tax relief is granted up to 31 December 2009. The tax relief entitlement originates at the time the tax according to the rates laid down in Section 2 is incurred by the party entitled to relief in respect of the energy products. In the case of sentence 1 points 1 and 2, tax relief is only granted if the biofuel does not serve the purpose of fulfilling an obligation under Section 37a(1) sentences 1 and 2, in conjunction with Section 37a(3) of the Federal Pollution Control Act, in the version published on 26 September 2002 (Federal Law Gazette I p. 3830), most recently amended by Article 1 of the Act of 25 June 2005 (Federal Law Gazette I p. 1865), as amended. In the case of sentence 1 points 1 and 2, tax relief is only granted for pure biofuels used instead of diesel and petrol if the minimum proportions of biofuels specified in Section 37a(3) of the Federal Pollution Control Act are exceeded. Sentence 4 shall apply accordingly to biofuels that are particularly eligible for favourable tax treatment pursuant to paragraph 1 point 3.

(2) By way of deviation from paragraph 1 sentence 2, tax relief according to paragraph 1 sentence 1 points 2 to 4 shall also be granted beyond 31 December 2009 up to 31 December 2015.

(3) Tax relief is granted to the sum of the tax allotted to the proportion of biofuel or bioheating fuel. By way of deviation from sentence 1, only partial tax relief is granted in relation to fatty acid methyl esters or vegetable oil on which duty has been paid at the rates laid down in Section 2(1) point 4. This relief amounts to the following:

1. for 1 000 l of fatty acid methyl esters:

up to 31 December 2007	EUR 399.40,
from 1 January 2008 to 31 December 2008	EUR 336.40,
from 1 January 2009 to 31 December 2009	EUR 273.40,
from 1 January 2010 to 31 December 2010	EUR 210.40,
from 1 January 2011 to 31 December 2011	EUR 147.40,
from 1 January 2012	EUR 21.40,
2. for 1 000 l of vegetable oil:

up to 31 December 2007	EUR 470.40,
from 1 January 2008 to 31 December 2008	EUR 388.90,
from 1 January 2009 to 31 December 2009	EUR 304.90,
from 1 January 2010 to 31 December 2010	EUR 220.90,
from 1 January 2011 to 31 December 2011	EUR 147.40,
from 1 January 2012	EUR 21.40.

(4) Sentences 2 to 5 notwithstanding, biofuels and bioheating fuels are energy products consisting entirely of biomass within the meaning of the Biomass Order of 21 June 2001 (Federal Law Gazette I p. 1234), amended by the Order of 9 August 2005 (Federal Law Gazette I p. 2419), as amended. Energy products a proportion of which is produced from biomass are regarded as biofuel and bioheating fuel to the sum of this proportion. Fatty acid methyl esters are wholly regarded as biofuels or bioheating fuels if they are extracted by esterification from vegetable or animal oils or fats which themselves constitute biomass within the meaning of the Biomass Order, and if their characteristics as a minimum satisfy the requirements of DIN EN 14214 (as at: November 2003). Bioethanol is regarded as a biofuel only if the substance in question is ethyl alcohol ex CN code 2207 10 00 with an alcohol content of a least 99% by volume and its characteristics as a minimum satisfy the requirements of the draft of DIN EN 15376 (as at: May 2006). As regards energy products which contain a proportion of bioethanol, sentence 4 shall apply, *mutatis mutandis*, to the bioethanol part. Vegetable oil is only regarded as biofuel if its characteristics as a minimum satisfy the requirements of prestandard DIN V 51605 (as at: July 2006). Those fuels which satisfy another standard or technical specification which is in force in another Member State of the European Union or a Signatory State

to the Agreement on the European Economic Area are equivalent to the fuels under sentences 1 to 6, provided these standards or technical specifications comply with the standards mentioned in sentences 1 to 6 and ensure an equivalent level of quality in relation to the same climatic requirements. The standard sheets, which can be obtained from Beuth Verlag GmbH, Berlin, are securely archived at the German Patent and Trademark Office.

(5) Biofuels that are particularly eligible for favourable tax treatment are

1. synthetic hydrocarbons or synthetic hydrocarbon mixtures obtained through the thermochemical conversion of biomass,
2. alcohols obtained by biotechnological methods for cellulose hydrolysis, or
3. energy products with a bioethanol content of 70% to 90%, in respect of this bioethanol content.

(6) Tax relief must not result in over-compensation of the additional costs associated with production of the biofuels and bioheating fuels mentioned in paragraph 1 numbers 1 to 5. To this end, the Federal Ministry of Finance, with the assistance of the Federal Ministry of Food, Agriculture and Consumer Protection, the Federal Ministry of Economic Affairs and Technology and the Federal Ministry of the Environment, Nature Conservation and Nuclear Safety, shall present a report to the *Bundestag* on an annual basis on the introduction of biofuels and bioheating fuels to the market and the evolution of prices of biomass and crude oil as well as fuel and heating fuel prices. In this report, in the event of over-compensation, adjustment of the tax allowance for biofuels and bioheating fuels in accordance with the development in commodity prices in relation to the market situation shall be proposed. In this regard, the effects on climate and environmental protection, the protection of natural resources, the external costs of the different fuels, the security of supply and the realisation of a minimum proportion of biofuels and other renewable fuels pursuant to Directive 2003/30/EC of the European Parliament and of the Council of 8 May 2003 on the promotion of the use of biofuels or other renewable fuels for transport (OJ L 123 p. 42) must be taken into consideration. With a view to assessing over-compensation, as regards biofuels that are particularly eligible for favourable tax treatment as per paragraph 5 points 1 and 2, a comparison shall be made of these biofuels with comparable biofuels that are not particularly eligible for favourable tax treatment. If new biofuels and bioheating fuels are introduced to the market, the Federal Ministry of Finance shall carry out an initial analysis of the additional costs in relation to the tax allowance with the assistance of the supreme federal authorities mentioned in sentence 1.

(7) In the event of the disruption of the German biofuels or bioheating fuels market, or to the biofuels or bioheating fuels market in the European Communities brought

about by imports from third countries, the federal government will put a motion to the Commission of the European Communities to initiate suitable protective measures.

4. Section 51(1) is amended as follows:

a) In point a) the words “calcium silicate units, aerated concrete products,” are replaced by the words “products made of concrete, cement and gypsum, mineral insulating materials,”.

b) Point b is worded as follows:

“b) for metal production and processing and, within the framework of the manufacture of metal products, for the manufacture of forged and pressed parts, deep drawn pieces and stampings, rolled rings and powder metallurgy products, as well as for surface refinement and heat treatment,”

5. In Section 51, the following paragraph 1a is added after paragraph 1:

“(1a) By way of deviation from paragraph 1, the tax relief shall be EUR 61.35 for 1 000 litres from 1 January 2009 for energy products for which proof can be furnished that duty has been paid on them in accordance with Section 2(3) sentence 1 point 1(a).”

6. In Section 53, the following paragraph 1a is added after paragraph 1:

“(1a) By way of deviation from paragraph 1, the tax relief shall be EUR 61.35 for 1 000 litres from 1 January 2009 for energy products for which proof can be furnished that duty has been paid on them in accordance with Section 2(3) sentence 1 point 1(a).”

7. Section 54(2) is amended as follows:

a) In point 1, “EUR 8.18” is replaced by “EUR 24.54”.

b) In point 2, “EUR 1.464” is replaced by “EUR 2.20”.

c) In point 3, “EUR 14.02” is replaced by “EUR 24.24”.

8. Section 55 is deleted.

9. Section 55 is worded as follows:

“Section 55
Tax relief for undertakings in special cases

(1) On application, tax relief is granted for natural gas, liquefied petroleum gases and gaseous hydrocarbons where proof can be furnished that duty has been paid on them in accordance with Section 2(3) sentence 1 and which have been burned for operational purposes by a production industry undertaking within the meaning of Section 2 number 3 of the Electricity Tax Act or have been used in recipient installations as per Section 3.

(2) For a calendar year, tax relief amounts to 95% of the tax portion as per paragraph 3, but no more than 95% of the amount by which the sum of the tax portion as per paragraph 3 and the electricity tax pursuant to Section 10(1) sentence 1 of the Electricity Tax Act exceeds the difference in the calendar year between

1. the contribution made by the employer to the social insurance pension fund contributions calculated for the undertaking if, in the calendar year for which the application is made (year of application), the rate of contribution to the general social insurance pension fund had been 20.3% and the rate of contribution to the miners' pension insurance fund had been 26.9%, and
2. the contribution made by the employer to the social insurance pension fund contributions calculated for the undertaking if, in the year when the application is made, the rate of contribution to the general social insurance pension fund had been 19.5% and the rate of contribution to the miners' pension insurance fund had been 25.9%.

If the rates of contribution to the social insurance pension fund in the year when the application is made are lower than the contribution rates mentioned in sentence 1 point 2, the lower rates are definitive when calculating the employer's contribution according to sentence 1 point 2.

(3) The tax portion (paragraph 2) is as follows:

1. for 1 MWh of natural gas or 1 MWh of gaseous hydrocarbons
in accordance with Section 2(3) sentence 1 point 4 EUR 1.46,
2. for 1 000 kg of liquefied petroleum gases in accordance with Section 2(3) sentence 1
point 5 EUR 10.80,
reduced by EUR 307.50.

(4) The production industry undertaking which has used the energy products is entitled to relief.”

10. Section 57(5) point 2 is worded as follows:

- “2. for 1 000 l of biofuels
- a) in accordance with Section 50(3) sentence 3 point 1
- | | |
|---|-------------|
| up to 31 December 2007 | EUR 90.00, |
| from 1 January 2008 to 31 December 2008 | EUR 150.00, |
| from 1 January 2009 to 31 December 2009 | EUR 210.00, |
| from 1 January 2010 to 31 December 2010 | EUR 270.00, |
| from 1 January 2011 to 31 December 2011 | EUR 330.00, |
| from 1 January 2012 | EUR 450.00, |
- b) in accordance with Section 50(3) sentence 3 number 2
- | | |
|---|-------------|
| up to 31 December 2007 | EUR 23.52, |
| from 1 January 2008 to 31 December 2008 | EUR 100.00, |
| from 1 January 2009 to 31 December 2009 | EUR 180.00, |
| from 1 January 2010 to 31 December 2010 | EUR 260.00, |
| from 1 January 2011 to 31 December 2011 | EUR 330.00, |
| from 1 January 2012 | EUR 450.00, |
- in each case not mixed with other energy products, with the exception of biofuels or additives under CN code 3811.”

11. The following point 11a is inserted after Section 66(1) no 11:

- “11a. shall enact provisions relating to Section 50, in agreement with the Federal Ministry of Food, Agriculture and Consumer Protection, the Federal Ministry of the Environment, Nature Conservation and Nuclear Safety, the Federal Ministry of Transport, Building and Urban Development and the Federal Ministry of Economic Affairs and Technology, and, in this connection
- a) shall stipulate that energy products shall only be recognised as biofuels if, during production of the biomass used, proof can be furnished that certain requirements pertaining to a sustainable cultivation of agricultural land or certain requirements for protecting natural habitats are satisfied, or if the energy product has a specific CO₂ reduction potential,
- b) shall lay down the requirements as defined in point a,
- c) taking technical development into consideration and by way of deviation from Section 50(4), shall designate energy products as biofuels, or, again by way of deviation from Section 50(4), shall stipulate that certain energy products are not regarded, or are no longer entirely regarded, as biofuels,
- d) shall specify in detail which biofuels are particularly eligible for favourable tax treatment according to Section 50(5), and

e) again by way of deviation from Section 50(5), shall designate energy products other than those mentioned therein as being biofuels that are particularly eligible for favourable tax treatment, provided they have a high CO₂ reduction potential and, during their manufacture, recourse can be made to a broader biogenic raw material base than is the case with conventional biofuels.”

12. The following point 11b is inserted after Section 66(1) point 11a (new):

“11b. shall, in agreement with the Federal Ministry of the Environment, Nature Conservation and Nuclear Safety, enact more detailed provisions regarding implementation of Section 50 and the statutory orders based on point 11a and in this connection regulate in more detail in particular the proofs required and the monitoring of compliance with the requirements pertaining to biofuels and the sampling required for this purpose,”

Article 2

Amending the Electricity Tax Act

The Electricity Tax Act of 24 March 1999 (Federal Law Gazette I p. 378, 2000 I p. 147), most recently amended by Article 2 of the Act of 15 July 2006 (Federal Law Gazette I p. 1534), is amended as follows:

1. Section 2 is amended as follows:

a) The following point 2a is inserted after point 2:

“2a. Classification of economic activities: the Classification of economic activities, 2003 edition (WZ 2003), published by the Federal Office of Statistics, 65189 Wiesbaden, Gustav-Stresemann-Ring 11, can also be obtained from the following webpage: www-ec.destatis.de;”

b) Point 3 is worded as follows:

“3. Production industry undertakings: Undertakings that are assigned to Section C (Mining industry and the extraction of stones and earth), D (Manufacturing), E (Energy and water supply) or F (Building trade) in the Classification of economic activities, as well as workshops approved for disabled persons within the meaning of Section 136 of the Ninth Volume of the Social Security Code, if

they predominantly carry on an economic activity which is to be assigned to the above-mentioned sections of the Classification of economic activities;”

c) Point 5 is worded as follows:

“5. Agricultural and forestry undertakings: Undertakings that are assigned to Section A (Agriculture and forestry) or Class 05.02 (aquaculture and pisciculture) in the Classification of economic activities, as well as workshops approved for disabled persons within the meaning of Section 136 of the Ninth Volume of the Social Security Code, if they predominantly carry on an economic activity which is to be assigned to Section A or Class 05.02 of the Classification of economic activities;”

2. Section 9a(1) sentence 1 is amended as follows:

a) In point 2 the words “calcium silicate units, aerated concrete products,” are replaced by the words “products made of concrete, cement and gypsum, mineral insulating materials,”.

b) Point 3 is worded as follows:

“3. for metal production and processing and, within the framework of the manufacture of metal products, for the manufacture of forged and pressed parts, deep drawn pieces and stampings, rolled rings and powder metallurgy products, as well as for surface refinement and heat treatment, each time for melting, heating, holding, stress relieving or other types of heat treatment”

c) The following point 4 is inserted after point 3:

“4. for chemical reduction processes”.

3. Section 10 is deleted.

4. Section 10 is worded as follows:

“Section 10

Remission, refunding or reimbursement in special cases

(1) On application, where proof can be furnished that duty has been paid on it, the tax in respect of electricity which a production industry undertaking has used for opera-

tional purposes, other than those under Section 9(2) point 2, shall be remitted, refunded or reimbursed in accordance with paragraph 2 if the tax paid in the calendar year exceeds the sum of EUR 512.50. The production industry undertaking which has used the electricity is entitled to remission, refund or reimbursement.

(2) 95% of the taxes are remitted, refunded or reimbursed for a calendar year, but no more than 95% of the amount by which the taxes paid in the calendar year exceed the difference between

1. the contribution made by the employer to the social insurance pension fund contributions calculated for the undertaking if, in the calendar year for which the application is made (year of application), the rate of contribution to the general social insurance pension fund had been 20.3% while the rate of contribution to the miners' pension insurance fund had been 26.9%, and
2. the contribution made by the employer to the social insurance pension fund contributions calculated for the undertaking if, in the year when the application is made, the rate of contribution to the general social insurance pension fund had been 19.5% while the rate of contribution to the miners' pension insurance fund had been 25.9%.

If the rates of contribution to the social insurance pension fund in the year when the application is made are lower than the contribution rates mentioned in sentence 1 point 2, the lower rates are definitive when calculating the employer's contribution according to sentence 1 point 2."

Article 3

Amending the Federal Pollution Control Act

The Federal Pollution Control Act, in the version published on 26 September 2002 (Federal Law Gazette I p. 3830), most recently amended by Article 1 of the Act of 25 June 2005 (Federal Law Gazette I p. 1865), is amended as follows:

1. The table of contents is amended as follows:
 - a) In the heading to Part 3, a semicolon and the word "biofuels" are added after the word "lubricants".
 - b) The following is inserted prior to "Section 32 Nature of the installations":

"Chapter I

Nature of installations, materials, products, fuels, aviation fuels and lubricants"

- c) The following chapter is inserted after “Section 37 Fulfilment of intergovernmental agreements and European Community resolutions”:

**“Chapter II
Biofuels**

- Section 37a Minimum proportion of biofuel in relation to the total quantity of fuel placed on the market
 Section 37b Definition, requirements pertaining to biofuels
 Section 37c Notification and levy obligations
 Section 37d Competent body, statutory orders”

2. In the heading to the Part 3, a semicolon and the word “biofuels” are added after the word “lubricants”.
3. The following is inserted before Section 32:

**“Chapter I
Nature of installations, materials, products, fuels, aviation fuels and lubricants”**

4. The following chapter is inserted after Section 37:

**“Chapter II
Biofuels**

Section 37a

**Minimum proportion of biofuel in relation to the total quantity
of fuel placed on the market**

(1) Any party which, for commercial purposes or within the framework of economic transactions, places fuels (petrol or diesel) on the market on which duty has to be paid at the rates laid down in accordance with Section 2(1) points 1 and 4 of the Energy Tax Act of 15 July 2006 (Federal Law Gazette I p. 1534), as amended, shall ensure that the total quantity of fuel placed on the market in the course of a calendar year contains a minimum proportion of biofuel as provided for in paragraph 3. Fuel is regarded as having been placed on the market with the incurrance of the energy tax pursuant to Section 8(1), Section 9(1), Section 11(6) sentence 1, Section 14(1) to (3), Section 15(1) or (2), in each case in conjunction with Section 15(4), Section 19, Section 22(1) or Section 23(1) or (2) of the Energy Tax Act. The sale of petrol or diesel to the Federal Armed Forces for the purposes of defence or for fulfilling intergovernmental obligations is not regarded as placing on the market within the meaning of sentences 1 and 2. The same

also applies to the purchase of petrol or diesel by the Federal Armed Forces for one of the purposes mentioned in sentence 3. On the basis of agreements under international law, troops and facilities located in the Federal Republic of Germany which are employed or used by the Federal Armed Forces or these troops respectively to fulfil their respective tasks have the same status as the Federal Armed Forces. The sale of fuel owned by the Mineral Oil Stockpiling Association on the basis of a release according to Section 30(1), also in conjunction with paragraph 2, of the Mineral Oil Stockpiling Act, by the former, by members of said association or third parties, as well as subsequent sales, are not regarded as placing on the market within the meaning of sentences 1 and 2. This also applies to the sale of fuel in the instances mentioned in sentence 6 in the context of transfers as per Section 5(2) of the Mineral Oil Stockpiling Act by members of the Mineral Oil Stockpiling Association or third parties, as well as to subsequent sales. The sale of compensating quantities to enterprises that have been under-supplied with a view to equalising supply within the meaning of Section 1(1) of the Mineral Oil Compensation Ordinance of 13 December 1985 (Federal Law Gazette I p. 2267), which has been most recently amended by Article 49 of the Act of 21 December 2000 (Federal Law Gazette I p. 1956), in the version in force at the time, is not regarded as placing on the market within the meaning of sentences 1 and 2.

(2) The obligated party as per paragraph 1 sentences 1 and 2 is the respective taxpayer within the meaning of the Energy Tax Act. By way of deviation from sentence 1, in the instances referred to in Section 7(4) sentence 1 of the Energy Tax Act, the third party (depositor) is the obligated party. In the instances under Section 14(1) and (3) of the Energy Tax Act, the owner of the bonded warehouse for untaxed goods which is to be disposed of is alone regarded as the obligated party within the meaning of sentence 1. In the instances under Section 14(2) of the Energy Tax Act, the owner of the receiving bonded warehouse for untaxed goods or, if such a warehouse does not exist, the entitled recipient within the meaning of Section 11(3) of the Energy Tax Act is regarded as the obligated party within the meaning of sentence 1. In the instances under Section 22(1) of the Energy Tax Act, that party which first performs one of the acts mentioned therein each time is alone regarded as an obligated party within the meaning of sentence 1.

(3) Obligated parties according to paragraph 1 sentences 1 and 2, in conjunction with paragraph 2 (obligated parties), which place diesel on the market, shall ensure that there is at least 4.4% of biofuel to replace diesel. Obligated parties which place petrol on the market shall ensure that there is at least 1.2% of biofuel to replace petrol for the year 2007, at least 2% for 2008, at least 2.8% for 2009 and at least 3.6% from 2010 onwards. Notwithstanding sentences 1 and 2, the minimum proportion of biofuel in relation to the total quantity of petrol and diesel placed on the market by an obligated party will be

6.25% in 2009, 6.75% in 2010, 7.0% in 2011, 7.25% in 2012, 7.5% in 2013, 7.75% in 2014 and 8.0% from 2015 onwards. Sentence 3 applies accordingly to obligated parties who place petrol or diesel only on the market. In the instances referred to in sentences 1, 2 and 4, the minimum proportions of biofuel relate each time to the energy content of the total quantity of petrol or diesel, plus the proportion of biofuel, while in the cases under sentence 3, they relate to the energy content of the total quantity of petrol and diesel, plus the proportion of biofuel. The total quantities in accordance with sentence 5 shall be corrected for the quantities for which tax relief has been granted under Section 47(1) point 1 or 2 of the Energy Tax Act.

(4) The minimum proportion of biofuel according to paragraph 3 can be ensured by mixing with petrol or diesel or by placing pure biofuel on the market. Fulfilment of the obligations according to paragraph 1 sentences 1 and 2, in conjunction with paragraph 3, may be transferred to a third party by means of an agreement which must be in writing. The agreement must contain quantitative data on the scope of the obligation undertaken by the third party as well as information regarding the period and the fuel in respect of which the obligation is transferred. Biofuel quantities which exceed the minimum proportion prescribed under paragraph 3 for a specific calendar year, and in respect of which no tax relief was applied for according to Section 50(1) to (5) of the Energy Tax Act, are included, on request, in the minimum proportion for the following year. This does not apply if biofuel quantities as per sentence 4 are credited, on the basis of information according to Section 37c(1) sentence 4, to the fulfilment of obligations undertaken by an obligated party by agreement as per sentences 2 and 3.

Section 37b

Definition, requirements pertaining to biofuels

Sentences 2 to 7 notwithstanding, biofuels are energy products consisting entirely of biomass within the meaning of the Biomass Order of 21 June 2001 (Federal Law Gazette I p. 1234), amended by the Order of 9 August 2005 (Federal Law Gazette I p. 2419), as amended. Energy products that are produced proportionately from biomass are regarded as biofuel to the sum of this proportion. Fatty acid methyl esters (biodiesel) are wholly regarded as biofuels if they are extracted by esterification from vegetable or animal oils or fats which themselves constitute biomass within the meaning of the Biomass Order, and if their characteristics at least satisfy the requirements of DIN EN 14214 (as at: November 2003). Bioethanol is only regarded as a biofuel when the substance in question is ethyl alcohol ex CN code 2207 10 00 as per Section 1(4) of the Energy Tax Act with an alcohol content of a least 99% by volume and its characteristics at least satisfy the requirements of the draft of DIN EN 15376 (as at: May 2006). As regards energy products which contain a proportion of bioethanol, sentence 4 shall apply,

mutatis mutandis, to the bioethanol part. Vegetable oil is only regarded as biofuel if its characteristics as a minimum satisfy the requirements of prestandard DIN V 51605 (as at: July 2006). Those fuels which satisfy another standard or technical specification which is in force in another Member State of the European Union or a Signatory State to the Agreement on the European Economic Area are equivalent to the fuels under sentences 1 to 6, provided these standards or technical specifications comply with the standards mentioned in sentences 1 to 6 and ensure an equivalent level of quality in relation to the same climatic requirements. Biogenic oils which are hydrogenated together with mineral oil based oils in an oil refinery procedure and energy products with less than 70% by volume of bioethanol to which bioethanol containing products falling within CN code 3824 9099 are added, and biogas are not taken into account in respect of the fulfilment of obligations under Section 37a(1) sentences 1 and 2 in conjunction with (3). As of 1 January 2012, energy products within the meaning of sentence 1 that are manufactured entirely or partly from animal oils or fats will no longer be taken into account in respect of the fulfilment of the obligations according to Section 37a(1) sentences 1 and 2, in conjunction with Section 37a(3). The Federal Ministry of Finance shall disclose the energy content of the various biofuels as well as any changes to their energy content. The standards mentioned in sentences 3, 4 and 6, which can be obtained from Beuth Verlag GmbH, Berlin, are securely archived at the German Patent and Trademark Office.

Section 37c

Notification and levy obligations

(1) Obligated parties shall notify the competent body by 15 April each year of the quantity of petrol and diesel brought to the market in the preceding calendar year, as well as the quantity of biofuel placed on the market, the latter related to the different biofuels concerned in each case. This notification shall also specify the obligated party's company, the location of the branch office or headquarters responsible for placing on the market, the pertinent address each time as well as the name and address of the authorised representative. If the fulfilment of obligations according to Section 37a(4) sentence 2 has been contractually transferred to a third party, the obligated party shall additionally give the details as per Section 37a(4) sentence 3 and present a copy of the agreement entered into with the third party. In this case, the third party shall indicate the quantity of biofuel brought to the market on account of his contractual obligation, relative to the different biofuels concerned in each case. The competent body shall issue each obligated party with a registration number and maintain an electronic register which contains all the information needed as per sentences 1 to 4 for all obligated parties.

(2) If an obligated party fails to fulfil an obligation as per Section 37a(1) sentences 1 and 2, in conjunction with Section 37a(3), the competent body shall lay down a levy for the biofuel shortfall that is calculated on basis of the energy content. In the instances referred to in Section 37a(3) sentences 1 or 3, also in conjunction with Section 37a(3) sentence 4, the levy amounts to EUR 19 per gigajoule. In the instances referred to in Section 37a(3) sentence 2, the levy amounts to EUR 43 per gigajoule. In the instances referred to in Section 37a(3) sentence 3, also in conjunction with Section 37a(3) sentence 4, the levy is not laid down for the biofuel shortfall in respect of which a levy shall already be stipulated according to sentence 2 or 3. If, in the case of Section 37a(4) sentence 2, the third party fails to fulfil his contractual obligation, the competent body shall stipulate the levy vis-à-vis the obligated party.

(3) If the obligated party has not provided the competent body with the information needed according to paragraph 1 sentences 1 and 3, or has not provided this information in the proper manner, the competent body shall estimate the quantities of petrol or diesel and biofuel placed on the market by the obligated party in the preceding calendar year. This estimate represents an irrefutable basis for the obligation under Section 37a(1) sentences 1 and 2, in conjunction with Section 37a(3). This estimate shall be omitted if the obligated party makes good the notification in connection with the hearing relating to the assessment ruling as per paragraph 2 sentence 1, in conjunction with paragraph 2 sentence 2 or 3. If a third party has not provided the information needed according to paragraph 1 sentence 4 in the proper manner, the competent body shall assume that the third party has not fulfilled the obligation he has accepted. Sentence 4 shall not apply if the third party makes good this notification vis-à-vis the obligated party as per paragraph 2 sentence 5 in connection with the hearing relating to the assessment ruling.

(4) In the instances referred to in Section 37a(2) sentence 2, the owner of a tax warehouse shall notify his competent main customs office, by means of the monthly energy tax declaration, of the amount of petrol and diesel, plus the proportion of biofuel, placed on the market for each obligated party.

(5) As regards paragraphs 1 to 4, the provisions of the Fiscal Code applying to excise duties shall apply accordingly. The notifications under paragraphs 1 and 4 shall be regarded as tax declarations within the meaning of the Fiscal Code. In the instances referred to in paragraph 2, the obligated party shall be granted a hearing prior to the setting of the levy.

Section 37d

Competent body, statutory orders

(1) Within the jurisdiction of the Federal Ministry of Finance, a competent body is established with the tasks of supervising fulfilment of the obligations according to Section 37a and fulfilment of the tasks regulated in Section 37c. The Federal Ministry of Finance is empowered to choose the competent body.

(2) Following consultation with the parties involved (Section 51), and without the approval of the *Bundesrat*, the Federal German government is authorised, by means of a statutory order

1. to classify products as biofuels, taking technical development into consideration, including in deviation from Section 37b sentences 1 to 6, or shall stipulate, again by way of deviation from Section 37b sentences 1 to 6, that certain products are not regarded, or are no longer fully regarded, as biofuels or to regulate the inclusion of biogenic oils within the meaning of Section 37b sentence 8 in the fulfilment of obligations mentioned there by way of deviation from this provision,
2. to determine, as far as quantity is concerned, that the proportion of a certain biofuel according to number 1 or Section 37b sentences 1 to 7 of total fuel sales within the framework of the fulfilment of obligations as per Section 37a(1) sentences 1 and 2, in conjunction with Section 37a(3), shall be calculated by multiplying the actual quantity of the respective fuel placed on the market by a certain factor which shall be stipulated taking into account the greenhouse gas balance of the biofuel in question,
3. to stipulate that biofuels shall only be included in the fulfilment of obligations as per Section 37a(1) sentences 1 and 2, in conjunction with Section 37a(3), if, during production of the biomass used, proof can be furnished that certain requirements pertaining to a sustainable cultivation of agricultural land or certain requirements for protecting natural habitats are satisfied, or if the biofuels have a specific CO₂ reduction potential,
4. to stipulate the requirements within the meaning of number 3,
5. to alter the amount of levy as per Section 37c(2) sentences 2 or 3 so as to ensure a similar economic burden for all obligated parties in the event of fuel price changes.

(3) The Federal Ministry of Finance is authorised, in agreement with the Federal Ministry of the Environment, Nature Conservation and Nuclear Safety and by means of a statutory order, without the approval of the *Bundesrat*, to enact more detailed provisions concerning the implementation of Sections 37a to 37c as well as the statutory orders based on paragraph 2, containing more detailed regulation of

1. the procedure for ensuring and monitoring compliance with the quota obligation in the cases in Sections 37(4) sentences 2 and 3 and with regard to the data required for determining the minimum proportions of biofuels,
 2. the required proofs and the monitoring of compliance with the requirements pertaining to biofuels as well as the sampling necessary for this purpose.”
5. Section 48 is amended as follows:

- a) This section as currently worded shall become paragraph (1).
- b) The following paragraph 2 is added after paragraph 1:

“(2) Following consultation with the parties involved (Section 51), and without the approval of the *Bundesrat*, the Federal Ministry of Finance, in agreement with the Federal Ministry of the Environment, Nature Conservation and Nuclear Safety and the Federal Ministry of Food, Agriculture and Consumer Protection, issues general administrative provisions regarding the implementation of Sections 37a, 37b and 37c and the statutory orders enacted on the basis of Section 37d.”

6. Section 52(3) sentence 1 is worded as follows:

“Paragraph 2 applies accordingly to owners and possessors of installations, materials, products, fuels, aviation fuels and lubricants where these are subject to Sections 37a to 37c or the provision of the statutory order enacted as per Sections 32 to 35, 37 or 37d.”

7. Section 62 is amended as follows:

- a) In paragraph 1, number 8, the full stop at the end of the sentence is replaced by a comma and the following points 9 and 10 added:

- “9. contrary to Section 37c(1) sentences 1 to 3, fails to provide the competent body with the data mentioned therein, or fails to provide this information in the correct manner, in full or on time, or fails to present a copy of the agreement with the third party or does not do so in good time,
10. contrary to Section 37c(1) sentence 4, fails to provide the competent body with the data mentioned therein in the correct manner.”

- b) The following paragraph 4 is added after paragraph 3:

“(4) In the cases of paragraph 1 numbers 9 and 10, the administrative authority within the meaning of Section 36(1) number 1 of the Act on breaches of the regulations is the competent body.”

Article 4 **Amending the Mineral Oil Data Act**

The Mineral Oil Data Act of 20 December 1988 (Federal Law Gazette I p. 2353), most recently amended by Article 131 of the Order of 25 November 2003 (Federal Law Gazette I p. 2304), is amended as follows:

1. The following paragraph 4 is inserted in Section 3:

“(4) During working and business hours, parties liable to report shall supply officers of the Federal Office of Economics and Labour with information, grant them access to operational areas and operating premises and allow them to inspect documents and records associated with the notification obligation.”

2. Section 5(2) is worded as follows:

“(2) Particulars may be passed on to the Federal Ministry of Economic Affairs and Technology, the Federal Ministry of Finance, the Federal Ministry of Transport, Building and Urban Development, the Federal Ministry of Food, Agriculture and Consumer Protection, the Federal Ministry of the Environment, Nature Conservation and Nuclear Safety, the supreme *Land* authorities responsible for trade and industry, the departments of the European Communities and the International Energy Agency, where this is necessary for fulfilling this Act.”

Article 5 **Entry into force, abrogation**

(1) Subject to paragraphs 2 to 6, this Act shall enter into force on 1 January 2007.

(2) Article 1 point 3 Section 50(1) sentence 6 shall cease to be valid on the day the Commission of the European Communities issues the necessary approval under subsidy regulations for a tax allowance on biofuels that are particularly eligible for favourable tax treatment which will assist in fulfilling the obligation as per Section 37a(1) sentences 1 and 2, in conjunction with Section 37a(3) of the Federal Pollution Control Act. The date on which the Act will cease to be valid shall be disclosed separately in the Federal Law Gazette by the Federal Ministry of Finance.

(3) Article 1 point 3 Section 50(2) shall enter into force on the day the Commission of the European Communities issues the approval under subsidy regulations required in this regard. The date on which the Act enters into force shall be disclosed separately in the Federal Law Gazette by the Federal Ministry of Finance.

(4) Article 1 point 3 Section 50(3) sentence 3 points 1 and 2 and Article 1 point 10 Section 57(5) point 2(a) and (b) shall enter into force, insofar as tax relief is granted from 1 January 2012 by these provisions, on the day the Commission of the European Communities issues the approval under subsidy regulations required in this regard. The date on which the Act enters into force shall be disclosed separately in the Federal Law Gazette by the Federal Ministry of Finance.

(4) Subject to an approval under subsidy regulations that is required each time in this regard from the Commission of the European Communities, Article 1 points 7 and 9 and Article 2 point 4 shall enter into force with effect from 1 January 2007. The entry into force of the Act shall be disclosed separately in the Federal Law Gazette by the Federal Ministry of Finance.

(6) Article 1 point 4 shall enter into force with effect from 1 August 2006.

Overview of the amendments made during the parliamentary legislative process

I. Article 1 is amended as follows:

a) The following points 01 and 02 are placed before point 1:

“01. Section 2(3) sentence 1 point 1 is worded as follows:

“1. for 1 000 l of correctly marked gas oils falling within CN codes 2710 19 41 to 2710 19 49

- | | |
|---|-------------|
| a) with a sulphur content greater than 50 mg/kg | |
| up to 31 December 2008 | EUR 61.35, |
| from 1 January 2009 | EUR 76.35, |
| b) with a sulphur content not greater than 50 mg/kg | EUR 61.35,” |

Explanatory notes: This amendment is intended to create the incentive to use low sulphur fuel oil.

02. Section 37(2) sentence 1 point 4 is worded as follows:

“4. as fuel oil for processes and methods in accordance with Section 51,””

Explanatory notes: In future, coal may also be used tax-free as a heating material for processes in accordance with Section 51 within the framework of the authorisation procedure. This will allow undertakings either to acquire the coal used for the processes and procedures in Section 51 without paying tax or to apply for tax relief.

b) Point 1 is amended as follows:

aa) Section 50(1) point 4 is worded as follows:

“4. in respect of energy products where proof can be furnished that duty has been paid on them at the rates laid down in Section 2(2), and which consti-

tute, or which contain, biogas (biomethane) produced by fermentation or synthetically from biomass and to natural gas quality and satisfying the requirements of Section 5 of the Tenth Order implementing the Federal Pollution Control Act (Order on the characteristics and quality marking of fuels), as amended,”

Explanatory notes: The addition to Section 50(1) point 4 puts the indefinite legal term "biogas (biomethane) produced to natural gas quality" into more concrete terms. The reference to Section 5 of the Tenth Federal Pollution Control Order ensures that tax relief is only granted for a biogas which meets the quality requirements pertaining to natural gas specified there.

bb) In Section 50(3), sentence 3 is worded as follows:

“This relief amounts to the following:

1. for 1 000 l of fatty acid methyl esters:

up to 31 December 2007	399.40,
from 1 January 2008 to 31 December 2008	336.40,
from 1 January 2009 to 31 December 2009	273.40,
from 1 January 2010 to 31 December 2010	210.40,
from 1 January 2011 to 31 December 2011	147.40,
from 1 January 2012	21.40,

2. for 1 000 l of vegetable oil:

up to 31 December 2007	470.40,
from 1 January 2008 to 31 December 2008	388.90,
from 1 January 2009 to 31 December 2009	304.90,
from 1 January 2010 to 31 December 2010	220.90,
from 1 January 2011 to 31 December 2011	147.40,
from 1 January 2012	21.40.”

Explanatory notes: The so-called “fictitious quota” provided for in Article 1 point 1 Section 50(1) sentence 5 of the draft Act is associated with a higher tax burden for pure biofuels. In order to compensate for this, the amount of tax relief for those pure biofuels which are in any case subject to taxation is corrected by the amount of additional tax burden resulting from the introduction of the “fictitious quota”.

c) Point 2 a is worded as follows:

“a) In point a) the words “calcium silicate units, aerated concrete products,” are replaced by the words “products made of concrete, cement and gypsum, mineral insulating materials,””

Explanatory notes: Through the amendment, products in the building materials industry that are in direct competition are treated equally.

d) The following points 2a and 2b are inserted after point 2:

“2a. In Section 51, the following paragraph 1a is added after paragraph 1:

“(1a) By way of deviation from paragraph 1, the tax relief shall be EUR 61.35 for 1 000 litres from 1 January 2009 for energy products for which proof can be furnished that duty has been paid on them in accordance with Section 2(3) sentence 1 point 1(a).”

2b In Section 53, the following paragraph 1a is added after paragraph 1:

“(1a) By way of deviation from paragraph 1, the tax relief shall be EUR 61.35 for 1 000 litres from 1 January 2009 for energy products for which proof can be furnished that duty has been paid on them in accordance with Section 2(3) sentence 1 point 1(a).”

Explanatory notes: These are amendments that are necessary as a result of the introduction of tax preference for low-sulphur fuel oil in order to simplify the fiscal implementation of the tax relief procedure.

e) In point 6, Section 57(5) point 2 is worded as follows:

“2.for 1 000 l of biofuels

a) in accordance with Section 50(3) sentence 3 point 1

up to 31 December 2007	90.00,
from 1 January 2008 to 31 December 2008	150.00,

from 1 January 2009 to 31 December 2009	210.00,
from 1 January 2010 to 31 December 2010	270.00,
from 1 January 2011 to 31 December 2011	330.00,
from 1 January 2012	450.00,
b) in accordance with Section 50(3) sentence 3 point 2	
up to 31 December 2007	23.52,
from 1 January 2008 to 31 December 2008	100.00,
from 1 January 2009 to 31 December 2009	180.00,
from 1 January 2010 to 31 December 2010	260.00,
from 1 January 2011 to 31 December 2011	330.00,
from 1 January 2012	450.00,

in each case not mixed with other energy products, with the exception of biofuels or additives under CN code 3811.”

Explanatory notes: As a consequence of the amendment in point 1, the relief amounts for pure biodiesel used in agriculture and forestry and vegetable oil must be adjusted accordingly. Pure biofuels used in agriculture and forestry will in effect continue to be tax-free.

f) The following point 8 is inserted after point 7:

“8. The following point 11b is inserted after Section 66(1) point 11a (new):

“11b.shall, in agreement with the Federal Ministry of the Environment, Nature Conservation and Nuclear Safety, enact more detailed provisions regarding implementation of Section 50 and the statutory orders based on point 11a and in this connection regulate in more detail in particular the proofs required and the monitoring of compliance with the requirements pertaining to biofuels and the sampling required for this purpose,”

Explanatory notes: This provision contains necessary authorisations required for the purpose of enacting implementing provisions for this Act. Accordingly, the proofs required for recognition of the characteristics of the biofuel (e.g. proofs of compliance with the DIN standard in accordance with Section 50(4) of the Energy Tax Act, proofs of compliance with particular requirements pertaining to sustainable cultivation of agricultural land or particular requirements for protecting

natural habitats) may be determined and the details of their inspection laid down in a statutory order.

II. Article 2 is amended as follows:

a) Point 2 is amended as follows:

aa) Point a is worded as follows:

“a) In point 2 the words “calcium silicate units, aerated concrete products,” are replaced by the words “products made of concrete, cement and gypsum, mineral insulating materials,””

Explanatory notes: Through the amendment, products in the building materials industry that are in direct competition are treated equally.

bb) In point (b) of point 3, the words “for melting, holding or stress relieving” are replaced by the words “for melting, heating, holding, stress relieving or other forms of heat treatment”.

Explanatory notes: The previous wording was too narrow, as it did not cover all uses of “heat transmission”.

cc) The following point (c) is added after point (b):

“c) The following point 4 is inserted after point 3:

“4. for chemical reduction processes”.

Explanatory notes: This provision makes use of Article 2(4) letter [], third indent, in accordance with which a tax allowance may be granted for electricity if it is used for the purposes of chemical reduction.

b) Points 3 and 6 are deleted.

Explanatory notes: The exemption from electricity tax for the manufacture of industrial gases is problematic from the point of view of subsidy regulations due to its selectivity and on grounds of economic policy it seems unnecessary.

III. In Article 3, point 4 is amended as follows:

a) Section 37a is amended as follows:

aa) The words “Section 17(1) point 1” are deleted from paragraph 1 sentence 2.

Explanatory notes: The quota obligation is not justified in the case of extraction of fuel from the standard fuel tank (incurrence of the energy tax in accordance with Section 17(1) point 1 of the Energy Tax Act), as the individual quantities placed on the market after being extracted from the standard fuel tank are so small (maximum approximately 800 to 1 000 litres) that they do not justify the administrative work involved in monitoring the quotas. The incurrence of tax in accordance with Section 17(1) point 1 of the Energy Tax Act represents an exceptional case which usually involves tax fraud in accordance with Section 370 of the Fiscal Code or negligent tax evasion in accordance with Section 378 of the Fiscal Code. Adequate sanctions have already been provided for for these infringements.

bb) Paragraph 2 is amended as follows:

1. The following sentence 2 is inserted after sentence 1:

“By way of deviation from sentence 1, in the instances referred to in Section 7(4) sentence 1 of the Energy Tax Act, the third party (depositor) is the obligated party.”

Explanatory notes: In the cases referred to in Section 7(4) sentence 1 of the Energy Tax Act, the relevant commercial depositor is in principle the owner of the goods and determines the type and quantity of the fuels that are to be placed on the market. The owner of a tax warehouse who, in accordance with the Energy Tax Act, becomes liable for tax for the fuels stored by him, has no possibility of

influencing the type and quality of the fuels and thereby contributing to fulfilment of the quota. Thus, in cases where fuel is deposited by third parties in an energy product warehouse, it is appropriate to designate the depositor as the party obligated to meet the quotas. Section 37a(1) sentence 2 that has been newly inserted provides for this change.

2. The words "Section 17(1) point 1 and" are deleted from sentence 4.

Explanatory notes: *This amendment is necessary as a result of the amendment to point III a aa).*

- cc) Paragraph 3 is amended as follows:

1. Sentences 2 and 3 are worded as follows:

"Obligated parties which place petrol on the market shall ensure that there is at least 1.2% of biofuel to replace petrol for the year 2007, at least 2% for 2008, at least 2.8% for 2009 and at least 3.6% from 2010 onwards. Notwithstanding sentences 1 and 2, the minimum proportion of biofuel in relation to the total quantity of petrol and diesel placed on the market by an obligated party will be 6.25% in 2009, 6.75% in 2010, 7.0% in 2011, 7.25% in 2012, 7.5% in 2013, 7.75% in 2014 and 8.0% from 2015 onwards."

Explanatory notes: *Since for technical reasons difficulties may arise in meeting the quota levels provided for in the draft Act in the first year of the quota obligation for petrol, the quota level for 2007 has been reduced to 1.2%. The 2% difference compared with the original quota level provided for 2007 is intended to be made up in 2009, for which a quota level of 2.8% has therefore been provided. For the years 2007 to 2009 there is thus an average quota obligation of 2%.*

As it is assumed that a corresponding production capacity will be available in Germany, the quota obligation for petrol has been increased from 2010 onwards from 3% to 3.6% and the total quota has been increased to 6.25% in 2009 and 6.75% in 2010. In order to provide adequate security of planning in respect of the further development of biofuel capacity in Germany from 2011 onwards, a quota obligation (total quota) increasing in a linear manner to 8% is provided for the

years 2011 to 2015. At a later point in time, whether or to what extent it can be ensured that the total quota for the period 2001 to 2015 is also met through the placing on the market of second generation biofuels shall be examined. It remains the case that the separate quotas for petrol and diesel fuel will also continue to apply after 2010.

2. The following sentence 6 is added:

“The total quantities in accordance with sentence 5 shall be corrected for the quantities for which tax relief has been granted under Section 47(1) point 1 or 2 of the Energy Tax Act.”

Explanatory notes: By correcting the total quantity of fuel on which the quota calculation is based, the facts relating to steam recovery and returns to the tax warehouse are taken into account and the quota calculation is limited to the total quantity of fuel actually placed on the market. These quantities would otherwise be included twice.

b) Section 37b sentence 8 is worded as follows:

“Biogenic oils which are hydrogenated together with mineral oil based oils in an oil refinery procedure and energy products with less than 70% by volume of bioethanol to which bioethanol containing products falling within CN code 3824 9099 are added and biogas are not taken into account in respect of the fulfilment of obligations under Section 37a(1) sentences 1 and 2 in conjunction with (3).”

Explanatory notes: This amendment is necessary in order to rule out the possibility of circumventing the valid definition of bioethanol (undenatured, alcohol content of at least 99% by volume) by using alcohol-containing blended products. In particular, the possibility of meeting the prescribed biofuel quota for petrol by mixing products falling within CN code 3824 9099 (e.g. E85) should be prevented.

c) Section 37c is amended as follows:

aa) Paragraph 2 is amended as follows:

1. In sentence 2, the figure “16” is replaced by “19” and in sentence 3 the figure “38” is replaced by “43”.

Explanatory notes: In order to ensure that the quota is met, the penalty is set at around 60 cents/litre for diesel and for the total quota and around 90 cents/litre for petrol. As regards an energy calculation, a levy of EUR 19 per gigajoule for fatty acid methyl esters and EUR 43 per gigajoule for bioethanol corresponds to this.

2. Sentences 6 and 7 are deleted.

Explanatory notes: The amendment described in point III(a)(cc)(1) makes the previous exemption in Section 37c(2) sentences 6 and 7 superfluous; it is therefore being deleted.

- bb) The following paragraph 4 is added after paragraph 3:

“(4) In the instances referred to in Section 37a(2) sentence 2, the owner of a tax warehouse shall notify his competent main customs office, by means of the monthly energy tax declaration, of the amount of petrol and diesel, plus the proportion of biofuel, placed on the market for each obligated party.”

Explanatory notes: This amendment is a consequence of the amendment in point III (a)(bb)(1). In order to be able to monitor fulfilment of the quota by the obligated party in this case it is necessary for the owner of the tax warehouse, as the party liable to pay tax, to apportion the quantities placed on the market on a monthly basis to the individual commercial depositors.

- cc) The following paragraph 5 is added after Section 37c(4) (new):

“(5) As regards paragraphs 1 to 4, the provisions of the Fiscal Code applying to excise duties shall apply accordingly. The notifications under paragraphs 1 and 4 shall be regarded as tax declarations within the meaning of the Fiscal Code. In the instances referred to in paragraph 2 sentences 1 to 5, the obligated party shall be granted a hearing prior to the setting of the levy.”

Explanatory notes: The Fiscal Code is declared to be applicable in order to prevent two different regulations governing administrative procedures (the Act on administrative procedures for the provisions of the Federal Pollution Control Act and the Fiscal Code for the provisions of the Energy Tax Act) being used in relation to the biofuel quota. The definition of the notifications under Section 37c(1) and (4) of the Federal Pollution Control Act as tax declarations within the meaning of the Fiscal Code serves to simplify the declaration and notification obligations under tax and quota law.

d) The following paragraph 3 is added after Section 37d(2):

“(3) The Federal Ministry of Finance is authorised, in agreement with the Federal Ministry of the Environment, Nature Conservation and Nuclear Safety and by means of a statutory order, without the approval of the *Bundesrat*, to enact more detailed provisions concerning the implementation of Sections 37a to 37c as well as the statutory orders based on paragraph 2, containing more detailed regulation of

1. the procedure for ensuring and monitoring compliance with the quota obligation in the cases in Sections 37(4) sentences 2 and 3 and with regard to the data required for determining the minimum proportions of biofuels,
2. the required proofs and the monitoring of compliance with the requirements pertaining to biofuels as well as the sampling necessary for this purpose.”

Explanatory notes: The provision contains the necessary authorisations required for enacting implementing provisions for this Act and to regulate the procedure for monitoring fulfilment of the quota in more detail. Accordingly, for example, the proofs required for recognition of the characteristics of the biofuel (e.g. proofs of compliance with the DIN standard in accordance with Section 37b of the Federal Pollution Control Act, proofs of compliance with particular requirements pertaining to sustainable cultivation of agricultural land or particular requirements for protecting natural habitats) may be determined and the details of their inspection laid down in a statutory order.

4. Article 5 is amended as follows:

a) Paragraph 1 is worded as follows:

“(1) Subject to paragraphs 2 to 6, this Act shall enter into force on 1 January 2007.”

b) The following paragraph 4 (new) is inserted after paragraph 3:

(4) Article 1 point 1 Section 50(3) sentence 3 points 1 and 2 and Article 1 point 6 Section 57(5) point 2(a) and (b) shall enter into force, insofar as tax relief is granted from 1 January 2012 by these provisions, on the day the Commission issues the approval under subsidy regulations required in this regard. The date on which the Act enters into force shall be disclosed separately in the Federal Law Gazette by the Federal Ministry of Finance.

Explanatory notes: The inclusion of this regulation is mandatory under subsidy law, as the tax relief amounting to EUR 21.40 per litre to be granted on a permanent basis from 1 January 2012 onwards is still a subsidy from the point of view of the European Commission.

c) The previous paragraphs 4 and 5 are renumbered 5 and 6.

d) In paragraph 5 (new), the reference “Article 2 points 3 and 5” is replaced by the reference “Article 2 point 5”.

Explanatory notes: This amendment is made as a consequence of the abolition of the exemption from electricity tax for the manufacture of industrial gases.