EURACOAL Response to Public Consultation

on the proposed revision of the Energy Taxation Directive (ETD) 2003/96/EC restructuring the Community framework for the taxation of energy products and electricity

Background

The Council of the EU conclusions adopted by EU finance ministers at their meeting on 5 December 2019 supports an update of the Energy Taxation Directive (ETD) so that it contributes to the EU's wider economic and environmental policy objectives. The Commission staff working document "Evaluation of the Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity" (SWD(2019) 332 final) outlines a proposed revision.

The Commission's evaluation finds that the ETD initially made an overall positive contribution towards its main objective of ensuring the proper functioning of the internal market, preventing double taxation or any distortion of trade and competition between energy sources and energy consumers or suppliers. However, the Commission adds that the overall EU added value of the ETD has eroded significantly over time. This is due, in particular, to the lack of indexation of the minimum rates and the extensive and highly divergent use of optional tax exemptions by member states, but also to the changing policy environment.

Public consultation

The Inception Impact Assessment which is the subject of the current public consultation identifies the following problems:

- The wide range of exemptions and tax reductions are viewed as fossil fuel subsidies, with aviation and maritime transport highlighted as fully exempt from energy taxation, while land transport bears a significant burden.

- A lack of alignment between the ETD and, among others, the EU emissions trading system (ETS), the Renewables Directive and the Energy Efficiency Directive. The ETD does not adequately promote greenhouse gas emission reductions, energy efficiency, or alternative fuels (*e.g.* hydrogen, synthetic fuels, e-fuels, advanced biofuels and electricity).

- The real value of the minimum tax rates has eroded over time such that they no longer have a converging effect on national rates; the vast majority of member states tax most energy products and, in some cases electricity, considerably above the ETD minima.

The Commission's assessment also suggests using a different legal basis for intervention. Instead of Article 113 of the Treaty on the Functioning of the European Union (TFEU) which requires a special legislative procedure whereby the Council acts by unanimity on taxation matters, it argues that decisions should be made according to TFEU Article 192 which covers environmental measures, including measures of a fiscal nature. This would allow the European Parliament and the Council to adopt proposals on energy taxation through the ordinary legislative procedure by qualified majority voting (QMV).

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The policy thinking behind the review aims to:

- align the taxation of energy products and electricity with EU energy and climate policies and so contribute to the EU targets for 2030 and climate neutrality by 2050, all in the context of the European Green Deal; and

- preserve the EU internal market by updating the scope and structure of minimum rates, as well as by rationalising the use of optional tax exemptions and reductions by member states.

Possible solutions are described only for the maritime and aviation sectors. Elsewhere, definitions may be clarified and the scope of the ETD extended. The Commission admits that any revised rates or changes to exemptions or reductions may have a direct economic impact on households and industry.

EURACOAL response

EURACOAL supports the European Commission's efforts to align the Energy Taxation Directive (ETD) with other measures such as the EU ETS, the Renewables Directive and the Energy Efficiency Directive. However, as this discussion is at a very early and preliminary stage, with no draft proposal or impact assessment presented by the European Commission, our comments can only be of a very general nature.

1. No tax without representation

The suggestion to change the legal basis for intervention, from a special legislative procedure requiring unanimity to the ordinary legislative procedure by qualified majority voting (QMV), does not find support among EURACOAL members. Any harmonisation of taxation across member states should only proceed on the basis of unanimity in Council. Member states must remain in control of what can become a burden on their citizens, as described in the Inception Impact Assessment.

2. Do not duplicate policy measures: tax OR trading, not both

Sectors falling under the EU emissions trading system (ETS) have a clear pathway ahead that leads to zero emissions. These sectors should not therefore be the target of any additional taxation for environmental or climate reasons. The EU ETS should remain the only instrument used to drive down CO_2 emissions from the power sector: it delivers the politically agreed climate-neutrality target.

3. Do not kill the golden goose

According to the European Commission's evaluation of the ETD published in 2019, a revision of the ETD would allow "green" renewable electricity to be taxed more lightly than "brown" electricity. However, this would be discriminatory and further exaggerate the cost of energy transition in some member states. For example, in 2016, €57 billion was spent in support of renewable power generation in the EU or over €100 per person. This subsidy added 17.60 €/MWh to the average cost of all EU electricity (CEER, 2018). Germany paid the most for renewables: €24 billion to subsidise one quarter of its power production, adding 37.67 €/MWh to the cost of all electricity consumed – more than its wholesale value. Not all countries can afford to invest so heavily in renewables, especially as conventional plants must also be kept operating as backup.

The total additional cost of transition, over and above business-as-usual, is estimated by the European Commission to be €175 billion to €290 billion each year out to 2050 (COM(2018) 773). This would achieve net-zero emissions at a cost of up to US$10 trillion – more than €500 each year for every man, woman and child in the EU. The vast majority of this investment must come from the private sector, including from individuals who must choose how to heat and light their homes, and how to travel. Investments made by individuals and industry will determine future emissions. Thus, the Energy Taxation Directive should complement the EU emissions trading system by covering only non-EU ETS sectors. It should not add to the tax burden on industry.

Looking to the longer term, the European Commission may envisage energy taxation as a basis for its future income, independent of member states. If EU policies are successful, then "brown" taxes would fall to zero. To maintain income, "green" taxes would logically have to rise which hardly fits with the aim of shifting the burden of taxation from "goods" to "bads".

EURACOAL recommends that a much deeper discussion about what to tax and how is needed before the European Commission embarks on any proposal to revise the Energy Taxation Directive.

4. Carbon not energy

In terms of the current debate, the ETD is a misnomer. To reach EU targets requires the taxation of life-cycle carbon emissions, including upstream emissions from the supply of energy, and not the taxation of energy *per se*. Rates should therefore be linked to life-cycle emissions which may have to be estimated in the case of imported fuels.

In terms of the energy transition and a move to all-electric solutions with sector coupling and hydrogen strategies for industry, it is important not to forget the impact of power prices on those with legacy responsibities. For example, in countries with former coal mines, the management of mine water is energy intensive and this activity should not be burdened with additional taxes.

5. International industrial competitiveness

Finally, Europe must remain a viable industrial region if it wants to be a leader in the energy transition with high standards of environmental protection and energy efficiency while, at the same time, providing prosperity for its citizens. Here, the impacts of carbon leakage cannot be ignored. These need to be dealt with separately to protect all those industrial sectors that are burdened by the heavy costs of emissions trading or energy taxes.

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