Public Consultation on the Revision of the Energy Taxation Directive (ETD)

The EU business community supports the EU's Green Deal agenda, as a growth strategy that will allow the continent to reach climate neutrality in line with the objectives of the Paris Agreement. As part of the policy package, a common EU-framework on the taxation of energy products is necessary for the smooth functioning of the EU energy market and to contribute to deliver on the EU's ambitions.

Companies need a stable and competitive policy environment, with both legal and tax certainty, to be able to make long-term investment decisions. In this context, the revision of the ETD is particularly relevant for the development of and investment in clean technologies.

The EU business community supports the Commission's intention to restructure and update energy taxation in Europe, taking into account all (energy) costs businesses are already facing as well as overall EU competitiveness. Europe is leading technology progress in the fields of energy, climate, environment and bioeconomy: an effective and operational ETD is needed to take account of the new energy mix, strengthen EU business competitiveness, and meet the EU's climate ambitions. In addition, improving legal clarity in the wording of some provisions and in the structure of the ETD, as highlighted by the Commission's analysis (p.22)[1], would improve the functioning of the internal market and provide businesses with more tax certainty when making decisions to modernise their production processes.

To make sure that the ETD is efficient and applicable, we consider the envisaged revision in the wider context of the current EU climate-related legislation and international relations, whilst acknowledging at the same time that the ETD-revision can be impacted by upcoming legislation, such as the Carbon Border Adjustment mechanism or the possible extension of ETS, whereby any possible impact or interaction with a revised ETD should be duly assessed. Further to our response to the questionnaire, we would like to provide further background to some of our answers.

Minimum Tax Rates

- We support the European Commission's intention to move away from volume-based taxation in the ETD. The current system, as highlighted in the Commission's analysis, can lead to a potentially higher tax burden on greener energy carriers. Moving the ETD away from volume-based taxation could therefore certainly be helpful in the transition towards our shared ambition of reaching climate neutrality in 2050 by incentivizing consumers and companies to choose a low-carbon, energy efficient alternative.

- However, in addition to our response to chapter 6.1 in the questionnaire, we underline that when moving the ETD's tax base towards energy content or CO2, or a combination of both, it is essential that the Commission's proposal for a

[1] https://ec.europa.eu/info/sites/info/files/swd_2019_0329_en.pdf

revision to the ETD takes into account all the (energy) costs EU businesses are faced with, guarantees the overall competitiveness of the EU, as well as the strict avoidance of double taxation.

In any revision, it remains important that sectors or companies at risk of carbon leakage are not taxed under the ETD on their energy use. Carbon-related mechanisms (including ETS-directive, ETS-state aid guidelines and EEAG) should be applied in a consistent and harmonized way. In this context, a clarification and simplification of the implementation of climate-related legislation would be very much welcomed. The revision should also take into account, where applicable, the impact of the upcoming proposal on a Carbon Border Adjustment Mechanism and a possible extension of the ETS.

In any revision which includes CO2-based taxation, it is essential that the ETD does not tax those greenhouse emissions which are already subject to the carbon price of the ETS. Clear, aligned rules should be made to avoid double taxation in this area. At the same time, should a revision of the ETD lead towards CO2-based taxation, some of the answers in the questionnaire should be interpreted in this context. For example, related to chapter 7.3 of the questionnaire, as businesses will move towards decarbonized energy in their daily industrial processes, EU rules on energy taxation can provide in this case some dedicated quantitative consumptions levels for low-carbon energy carriers (i.e. when you use more, you pay less per unit) to support the adoption of clean technologies.

Finally, it is also important to note that the ETD has always recognized the potential implications of this directive for the overall competitiveness of the EU (recital 8), and we welcome the Council's recognition that the assessment should take into account in particular those sectors most exposed to international competition[2]. For example, in some energy intensive industries, the energy costs can reach up to 20% of total production costs[3]. The provisions in the ETD in relation to the taxation treatment of the production of energy products and electricity play and should continue to play after the revision an important role in maintaining the competitiveness of EU industry.

Fiscal and Social Impact

- A fiscal reform towards greater energy taxation can and should result in greater investment in the energy transition as well as a lower tax burden in other areas, such as lower taxes on labour income and capital which are seen as the most harmful taxes to economic growth.

  However, the potential of increasing energy taxes to offset a decrease in income

[2] https://www.consilium.europa.eu/en/press/press-releases/2019/12/05/energy-taxation-council-calls-for-an-updated-framework-contributing-to-a-climate-neutral-eu/
[3] https://ec.europa.eu/energy/sites/ener/files/epc_report_final_1.pdf

tax, is small, given the stark differences in revenue potential (In 2018, the EU-27 raised some €250bn in energy taxes, compared to €1.3trn in personal income tax[4]). Overall, the goal of a revised ETD should be to support the Single Market, EU competitiveness and the energy transition. The tax revenue raising potential of the ETD should not be a goal in itself.

Most importantly, we underline that any decision regarding the tax policy mix is each Member State's own decision to make and we support Member States' national competence in this area. In this light, Member States should also see in what way their own national tax framework could be adapted at national level in order to support the green transition (e.g. reduction in VAT-rates on green products, energy efficient services, etc) or address other environmental concerns (such as air pollution).

- At the same time, we understand concerns regarding the potentially significant impact of a revision of the ETD on lower-income households, particularly regarding heating energies. However, we believe that Member States are best-placed to address these concerns at the national level, rather than through the ETD. Overall, in line with our remarks above, lower-income households would most benefit from a reduction in the overall tax burden, and in particular the personal income tax.

State Aid

- We are concerned that the questionnaire does not address any potential improvements regarding legal clarity for businesses in terms of state aid. We would support the Commission to seek consensus in a revision of the ETD between Member States to ensure that any energy tax reductions or exemptions allowed by the ETD is automatically considered in line with state aid rules and fall under the revised General Block Exemption Regulation. This would avoid the substantial but unnecessary additional burdens for taxpayer and Member State, in terms of notification and demonstration of necessity and proportionality of the aid/tax reduction in question.

Transportation (Air, Maritime, Road)

- CO2 pricing should encourage the deployment of the most efficient and least emitting energy carriers used for the international transportation of people and freight. Ideally, CO2 pricing initiatives on carbon emissions of transport are coordinated at the international level in order to maintain a level playing field, especially between developed nations. That said, if European institutions will explore more unilateral measures, including taxes, it is important that any agreed EU legislation on CO2 pricing impacting international transport is immediately discussed with trading partners and other third countries through diplomacy and

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[4] https://ec.europa.eu/taxation_customs/business/economic-analysis-taxation/taxation-trends-eu-union_en

bilateral negotiations. Upscaling EU legislation to the plurilateral or multilateral level would be most effective for reducing global transport emissions. That said, should European institutions propose a unilateral measure, it is essential that this is carefully designed (e.g. accounting for the particular situation of island countries).