MYTILINEOS

To:
European Commission,

1049 Bruxelles/Brussel
BELGIQUE/BELGIË

Marousi, March 31, 2020

MYTILINEOS is one of South-East Europe's leading industrial companies, with activities in numerous sectors (*including Metallurgy, Electricity generation and supply, Gas trading, and EPC works*). Our company owns and operates the largest fully vertically integrated alumina refinery & primary aluminium smelter in Europe. A state-of-the-art, high-efficiency, gas-fired CHP plant covers the massive heat needs of the alumina refinery.

As identified in the Inception Impact Assessment for the revision of the Energy Taxation Directive (ETD), significant developments across numerous fields (*e.g. energy, technology, climate change*) since the adoption of the Directive in 2003 mean that the ETD is no longer in line with EU policy objectives and should therefore be revised. In particular, the EU is currently in the process of evaluating the possibility to further raise its climate goals under the European Green Deal, including efforts to enshrine the ambitious target for climate neutrality by 2050 into EU law.

In this regard (*and as already reflected in recital 8 of the ETD*), energy taxation has a crucial **dual role** to play. Namely, the ETD should: (i) enable the energy transition by incentivising the consumption of low-carbon energy in the most efficient way possible, (ii) while also preserving the global competitiveness of European industry, in order to prevent disastrous carbon leakage.

It is widely acknowledged that the transition towards a climate-neutral economy will require the further development and scale-up of innovative alternative fuels, such as green hydrogen and biomethane. However, the ETD does not actually classify many of these alternative fuels, given that their significance was extremely limited back when the Directive was adopted in 2003 (*in many cases, they simply didn't exist at all*). As a result, there is no common European approach for the taxation of these fuels. At the same time, it must be stressed that the costs associated with producing and consuming alternative fuels still tend to be significantly higher than the equivalent costs for conventional fuels. This is a key barrier preventing the further uptake of

8 Artemidos Str., Maroussi, 151 25 Athens
T: +30 210 6877 300 F: +30 210 6877 400
E: info@mytilineos.gr

www.mytilineos.gr

alternative fuels. Therefore, foreseeing preferential tax treatment for decarbonised fuels would kill two birds with one stone. A full tax exemption for such fuels would (partly) offset the significant additional costs that their consumption entails, thereby incentivising the transition towards cleaner fuels while also reducing the negative impact on the global competitiveness of Europe's industrial consumers.

Indeed, **the importance of the ETD in ensuring the global competitiveness of European industry cannot and should not be overlooked**. This goal is already reflected in recital 8 of the Directive, and is also discussed at length in last year's Commission Staff Working Document on the evaluation of the ETD (*SWD(2019) 329 final*). In order to highlight the importance of energy taxation in determining the global competitiveness of European industry, the aforementioned SWD references the fact that for some energy intensive sectors, the share of energy in total production costs exceeds 10%. This percentage is actually on the lower end of the scale. For primary aluminium smelters, **electricity** costs tend to exceed 40% of total production costs[1], whereas similar percentages are also identified in other electro-intensive sectors, such as silicon and zinc. This is particularly problematic when one considers that said industries in Europe tend to face significantly higher energy prices than competing industries in other regions of the world. As mentioned in the aforementioned Commission SWD, EU industrial electricity prices are, on average, 50% higher than the equivalent US prices, whereas "*industrial electricity consumers in most other G20 countries (Canada, India, Russia, Mexico, South Korea, Saudi Arabia, and Turkey) also pay lower electricity prices than in the EU*". Nominal industrial energy prices in China are comparable with EU prices, but this should be read in conjunction with the strong evidence of massive state subsidies for industrial consumers in China[2], which relieves Chinese firms of the impact of nominal energy prices, boosting their global competitiveness. Furthermore, according to the same Commission SWD, "*concerning gas, industrial prices in the EU are lower than those in Asia (Japan, South Korea, China) but higher than in the rest of the G20. Particularly industrial consumers in gas producing countries, like the US, Canada, Russia, or Brazil* ***pay prices around half of those in the EU***".

Given that excise duties make up approximately one quarter of all taxes and levies imposed on industrial electricity prices and **88%** of all taxes imposed on natural gas prices, the SWD concludes that "*EU industries have to pay higher energy prices than industries in most G20 countries. This has an impact on their competitiveness, in particular in the case of energy intensive industries. The ETD can play a role in mitigating these EU price premiums through the exemptions and reductions it provides for. By lowering prices, optional ETD exemptions can maintain the global competitiveness of EU industries*".

Protecting the global competitiveness of European industry also has a clear climate rationale. Europe is already a frontrunner in industrial decarbonisation. As noted in the

[1] European Commission, 2018. Composition and Drivers of Energy Prices and Costs: Case Studies in Selected Energy Intensive Industries – 2018.
[2] OECD, 2019. Measuring Distortions in International Markets: The Aluminium Value Chain.

Commission's recent Inception Impact Assessment for the 2030 Climate Target Plan, the EU "*is already today the most GHG-efficient major economy in the world*". Emissions from European industry have already been reduced by over 30% compared to 1990 levels[3], and are continuing to decrease. As a result, industrial production in Europe is already among the cleanest in the world. For example, the carbon footprint of producing primary aluminium in Europe (*6.7 tCO_2 per tonne of aluminium*) is, on average, **three times lower** than the carbon footprint of producing the same metal in China (*20 tCO_2/t*)[4]. Thus, any erosion of the global competitiveness of European industry (*e.g. due to excessive taxation*) will lead to carbon leakage, due to the displacement of European production by more carbon-intensive production in other regions of the world. Of course, the climate-based rationale of the ETD revision would be completely undermined if it results in carbon leakage. Instead, the ETD should seek to preserve (or rather enhance) the global competitiveness of European industry, in order to enable it to continue decarbonising, thereby contributing to a decrease of emissions on a (*European and*) global level.

One way to support the global competitiveness of European industry would be to provide for a mandatory exemption of electricity used in electrolytic and metallurgical processes. Currently, such uses of electricity are excluded from the scope of Directive under Article 2(4). Although this means that Member States are able to exempt electricity used in electrolytic and metallurgical processes from taxation, Member States also -theoretically-maintain the discretion to tax such processes, leading to uncertainty (*as well as potential negative consequences with regard to maintaining a level playing field within the internal market*). Indeed, the Commission's original intention when drafting the proposal for the ETD[5] was to provide for a mandatory exemption, acknowledging the very particular role of electricity in these uses; however, a failed compromise led to electrolytic and metallurgical processes being "excluded from the scope" of the Directive instead[6]. Furthermore, in line with the general ETD principle, according to which it is the use of the energy products that determines their tax treatment, it would be unfortunate (and, frankly, wrong) for Member States to retain their discretion with regard to the taxation of electricity used in electrolytic and metallurgical processes.

The core principle of the ETD, still valid today is that "*energy products and electricity are only taxed when they are used as motor or heating fuel, and not when they are used as raw materials or for the purposes of chemical reduction or in electrolytic and metallurgical processes*"[7]. Therefore, for the purpose of ensuring a level-playing field, such uses (electrolysis and metallurgical processes) should be expressly exempt from excise tax, rather than leaving it to the discretion of each Member State whether to tax these uses or not. This would also comply with the current practice adopted in every Member-State (*where energy products & electricity are used*

[3] Ibid, 2018.
[4] European Aluminium, 2019. Vision 2050; European Aluminium's Contribution to the EU's Mid-Century Low-Carbon Roadmap.
[5] https://eur-lex.europa.eu/legal-content/EN/AUTO/?uri=celex:51997PC0030
[6] Instituto de Estudios Fiscales, 2005. Energy Taxation in the European Union. Past Negotiations and Future Perspectives.
[7] See thereto https://ec.europa.eu/competition/publications/cpn/2003_3_14.pdf and

in the metallurgical or electrolytic process of energy-intensive industries). To this end, given that "*the starting point for the exercise will be continuation of the current Directive in the context of the new baseline scenario of the European Green Deal and its higher ambition for 2030*" and the declared objective to "*strengthen the level playing field across the EU internal market while contributing to the climate and energy policy goals of the EU" while "not creating any considerable regulatory burden or cost for the Member States, nor for economic operators*", the update of the ETD should reflect the reality across the EU and avoid compromising global competitiveness of sectors immensely exposed to power costs.

Finally, said clarifying provision would be completely aligned with the EU's ambitious climate goals as set out in the Green Deal and the Commission's Long Term Strategy for a Climate Neutral economy by 2050, published in November 2018, namely the need to incentivize further electrification of energy intensive industrial processes.

The ETD revision should also address a discrepancy in the current Directive, which constitutes a significant hurdle for industrial sites throughout the EU that use high-efficiency cogeneration (CHP) plants to cover their demand for heat. Article 14 of the ETD mandates that Member States shall exempt from taxation "*energy products and electricity used to produce electricity and electricity used to maintain the ability to produce electricity*", unless taxation is used for environmental policy purposes. Meanwhile, Article 15 leaves it to Member States' discretion whether or not to exempt from taxation energy products used in the production of "*environmentally friendly*" cogeneration (*the notion of High-Efficiency Cogeneration, as defined in Directive 2004/8/EC and later the Energy Efficiency Directive, had not yet been established back when the ETD was published*).

Given that the process of cogeneration concerns the combined, highly efficient production of heat and electricity, a decision that was issued by the Court of the EU in 2018 (in case C-31/17) clarified that the mandatory exemption from taxation of energy products and electricity used to produce electricity should also apply in relation to electricity produced via the process of cogeneration. This should be reflected in the revised ETD. In order to do this, a portion of the energy products that are consumed during the process of cogeneration are virtually allocated to the production of electricity (*and a tax exemption is applied in relation to these energy products*), whereas the remaining energy products are allocated to the production of heat. However, this still means that Member States retain the discretion to tax the portion of the energy products that is allocated to the production of heat. This essentially leads to **penalizing** an energy-efficient technology such as CHP, when compared to the full, mandatory exemption applied to conventional electricity generation (*possibly combined with a full exemption for energy products used in the -stand-alone- production of heat by energy-intensive industries as prescribed in art. 17par. 2 of the current Directive*). The aforementioned EU Court decision in Case C-31/17 stresses the significant role of CHP in achieving the EU's environmental objectives and calls for unambiguous incentives for the promotion of this technology, including through the taxation of energy products (*see points 33 of the* decision). Therefore, also taking into account the significant role that CHP can play in

boosting the competitiveness of energy-intensive industries, as explicitly recognized in the Energy Efficiency Directive (*2012/27/EU, see Article 14 and recitals 35 & 38*) as well as the massive untapped potential for this technology in the EU, **the revised ETD should foresee a full and unequivocal exemption from excise tax of energy products and electricity used for high efficiency cogeneration** (*as defined in Directive 2012/27/EU*).

Finally, given that the ETD was adopted in 2003, before the initial CHP Directive (which dates back to 2004), the revised ETD should adopt the EED definition (or refer to Directive 2012/27/EU) to distinguish '*environmentally friendly*' CHP, namely "high-efficiency CHP".

Yours sincerely,
For MYTILINEOS S.A.

Nick Keramidas
EU & Regulatory Affairs Director