

EUROCHAMBRES input to the public consultation on the revision on the Energy Taxation Directive

EUROCHAMBRES appreciates the opportunity to provide feedback to the public consultation on the revision of the Energy Taxation Directive. We agree with the assessment that the Directive needs to be revised in order to be adapted to the current economic situation as well as the new energy and climate framework. However, Chambers do not agree that the current legislation per se favours fossil fuels and incentivises energy efficiency and renewables too little. Moreover, a balanced approach must be struck between positive environmental steering effects and the need and wish for increased tax income.

EUROCHAMBRES urges the Commission to adhere to the following principles in the revision of the Energy Taxation Directive:

1. Legal basis

In the inception impact assessment, the European Commission deliberates on the choice of legal basis, arguing that the revision of the ETD shall focus on environmental issues, and thus outlining the possibility of adopting Article 192 TFEU as a legal basis, which would invite Member States to consider a passarelle clause to apply the Ordinary Legislative Procedure. The Energy Tax Directive is a tax legislation and should be treated as such through Article 113 TFEU. A precedent was already set with the revision of the ETD proposal in 2011 with Article 113 TFEU being the legal basis in that instance. The same principles still apply and should be respected.

2. Steering effect

There are concerns that this tax on energy is being disguised as an environmental tax, when ultimately it would be just another source of income for the respective member states. Like the case of tax on harmful health products such as cigarettes, of which there is no empirical evidence showing that revenue is invested to reduce smoking, there is equally no established mechanism to ensure that the revenues from an energy tax would be re-invested in R, D& I or in addressing EU climate objectives.

A tax on energy will also substantially impact peripheral island states and regions whose only means of connectivity is by air and sea. This will have an impact on Europe's social cohesion.

3. Avoid double burden

At the time of introduction of the Energy Taxation Directive, the ETS did not exist yet. It is a very useful and efficient, market-based instrument and has proven its efficacy in reducing greenhouse gas emissions in industry and power sector. In addition, according to the Green Deal this system is planned to be further extended, for examples to the transport sector. The additional taxation of fuels that fall under the ETS and are therefore already subject to a carbon price, does not add any incentives in terms of emissions reduction or energy efficiency gains.

Such a double burden would also lead to significant competitive disadvantages in sectors that are covered by the ETS and exposed to international competition. It would thus jeopardise the competitiveness of the entire EU economy. In the point of view of Chambers, fuels that are covered by the ETS should therefore be exempted from energy taxation. National carbon pricing systems in a number of EU member states must be duly taken into account.

4. Strengthen element of carbon content in energy taxation

EUROCHAMBRES supports the strengthening of carbon content in energy taxation. The current legislation is not up to date with today's energy systems and doesn't take into account the climate effect of modern fuels. Decarbonised gases, biogas and hydrogen all have a low carbon content and have to be incentivised in order to successfully manage a clean energy transition. The same holds true for natural gas in relation to coal and petrol.

With regards to renewable power generation with high upfront fixed costs but relatively low variable costs, taxation according to used kWh is not in line with our energy and climate objective anymore. It leads to a situation where corporate consumers try to reduce electricity use as much as possible, which is clearly a wrong incentive given the objective to increase electrification to decarbonise industry.

5. Maintain exemptions and phase out taxation

The current rules for exemptions should be maintained. Especially for sectors exposed to strong international competition the additional costs would make investments in a cleaner production, energy generation and transport modes more difficult, especially given the challenging economic situation. The taxation of carbon content of fuels should moreover be phased out as CO₂-prices (e.g. via the ETS) rise. In addition to minimum rates, the introduction of maximum rates should be considered. This would significantly reduce distortions in the single market thanks to greater harmonisation of national energy tax regimes.

For instance, in the aviation and maritime transport sectors, that, besides, are already heavily taxed otherwise, fuel taxes could be circumvented in a way that would limit the emission reduction impact envisaged. International operators could design their fueling and bunkering patterns in a way that would by-pass EU jurisdictions. In the case of the maritime sector specifically, the introduction of tax on ships' fuel would go against the 1999 Kyoto Convention on the Simplification and Harmonisation of Customs Procedures that stipulates that ships on international voyages shall be entitled to take on board fuel and lubricants, exempt from duties and taxes. In case of the aviation sector exempting jet fuel, lubricants, spare parts, technical supplies, and other related items from national fees, duties, taxes and charges is an established principle as espoused by the International Civil Aviation Organization (ICAO) and the EU-US Open Skies Agreement exempts fuel used in international air transport. The current ETD complies with these global norms. Both sectors have invested heavily in cleaner transport modes and additional taxation would hamper their capacity to continue doing so.

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