

***ERCST's rationale for the submission to the  
Public Consultation for the Revision of  
Directive 2003/96/EC (Energy Taxation  
Directive)***

This document presents the rationale behind ERCST's submission to the public consultation for the revision of the Energy Taxation Directive (ETD).

From discussion with stakeholders, we consider two main priorities for the revision of the ETD:

1. Avoiding double taxation between the EU ETS, which is seen as the main carbon pricing instrument at the European level, and the ETD, if this will be revised to tax fuels based on their carbon content.
2. Eliminating "fossil fuel subsidies", also deriving from the current revision's mandatory exemption for aviation and maritime fuels. For the aviation sector, the carbon component is covered by the EU ETS. Therefore, to avoid double taxation, the ETD should exempt aviation fuel at least for its carbon content, if the ETD will be revised to include a CO<sub>2</sub> component.

We hold the view that this revision is part of a broader set of policy reforms, namely the European Green Deal, whose main objective is environmental. Therefore, we understand the main objective of the revision of the Energy Taxation Directive to also be environmental.

Hence, we believe the main focus should be on taxing CO<sub>2</sub>, with the energy content of fuels taking a secondary role. Nonetheless, including an energy content component will help deliver on energy efficiency by encouraging lower consumption, and as such it should not be discarded.

Another important element that should be considered in the context of the revision is the risk of carbon leakage. The EU ETS addresses this risk by allocating allowances for free to sectors that are highly trade exposed. Likewise, if the ETD tax structure will be based on the carbon content, it will be necessary to find ways to address this risk. Otherwise, sectors that are not within the ETS scope but that will be subject to energy taxation will be treated unfairly vis-à-vis those covered.

Finally, it is important that the questions contained in the Commission's Public Consultation document be read in conjunction with this paper, as we believe the rationale behind the answers we provide is as important as the questions.

## Section 4: General context for the revision of Energy Taxation Directive and main challenge

*To what extent do you agree with the following statements about the EU Energy Taxation Directive (ETD)?*

|   | a)<br>Strongly<br>agree          | b)<br>Somewhat<br>agree | c)<br>Somewhat<br>disagree       | d)<br>Strongly<br>disagree | e)<br>Do<br>not<br>know          |
|---|----------------------------------|-------------------------|----------------------------------|----------------------------|----------------------------------|
| 1) The ETD should be revised in order to support the transition towards climate neutrality  | <input checked="" type="radio"/> | <input type="radio"/>   | <input type="radio"/>            | <input type="radio"/>      | <input type="radio"/>            |
| 2) The ETD has to be revised in order to better tackle environmental concerns, like air pollution                                 | <input type="radio"/>            | <input type="radio"/>   | <input type="radio"/>            | <input type="radio"/>      | <input checked="" type="radio"/> |
| 3) The ETD has to be revised in order to better ensure the smooth functioning of the internal market                              | <input checked="" type="radio"/> | <input type="radio"/>   | <input type="radio"/>            | <input type="radio"/>      | <input type="radio"/>            |
| 4) The ETD has to be revised in order to take into account the changed energy mix with higher share of renewables and electricity | <input checked="" type="radio"/> | <input type="radio"/>   | <input type="radio"/>            | <input type="radio"/>      | <input type="radio"/>            |
| 5) The ETD should better promote energy saving/efficiency   | <input checked="" type="radio"/> | <input type="radio"/>   | <input type="radio"/>            | <input type="radio"/>      | <input type="radio"/>            |
| 6) The ETD de facto favours fossil fuels consumption  | <input type="radio"/>            | <input type="radio"/>   | <input checked="" type="radio"/> | <input type="radio"/>      | <input type="radio"/>            |
| 7) The ETD is applied in a too diversified way across the Member States   | <input checked="" type="radio"/> | <input type="radio"/>   | <input type="radio"/>            | <input type="radio"/>      | <input type="radio"/>            |

1. Strongly agree: the ETD is key in delivering climate neutrality
2. Do not know.
3. Strongly agree: the current rates, set in 2003, are not relevant anymore, considering both inflation and the high degree of heterogeneity with which member states apply the rates domestically.
4. Strongly agree: the energy mix has already changed considerably since 2003 and must change even more to reach climate neutrality by 2050. In light of this commitment, the

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ETD must reflect not only the higher share of renewables in the energy mix, but also the new fuels and technologies that will contribute to decarbonization.

5. Strongly agree: energy saving/efficiency is a key component of the objective to achieve climate neutrality by 2050.
6. Somewhat disagree: the ETD does not encourage use of fossil fuels, rather it does not provide any incentive to move away from them as it currently does not explicitly tax CO<sub>2</sub>.
7. Strongly agree.

*Which of the following priorities are important for the EU Energy Taxation Directive (ETD)?*

|  | a)<br>Strongly<br>agree          | b)<br>Somewhat<br>agree          | c)<br>Somewhat<br>disagree | d)<br>Strongly<br>disagree | e)<br>Do<br>not<br>know |
|--|----------------------------------|----------------------------------|----------------------------|----------------------------|-------------------------|
| 1) The ETD should ensure adequate amounts of tax revenues  | <input type="radio"/>            | <input checked="" type="radio"/> | <input type="radio"/>      | <input type="radio"/>      | <input type="radio"/>   |
| 2) The ETD should not tax the energy use in sectors or companies which are at risk of carbon leakage                   | <input checked="" type="radio"/> | <input type="radio"/>            | <input type="radio"/>      | <input type="radio"/>      | <input type="radio"/>   |
| 3) The ETD revision should reduce the possibility of favouring fossil fuels via tax reductions, exemptions and rebates | <input checked="" type="radio"/> | <input type="radio"/>            | <input type="radio"/>      | <input type="radio"/>      | <input type="radio"/>   |
| 4) The tax system should ensure compensations for low income households when implementing energy taxation              | <input checked="" type="radio"/> | <input type="radio"/>            | <input type="radio"/>      | <input type="radio"/>      | <input type="radio"/>   |
| 5) The ETD revision should take into account energy content in the definition of rates                                 | <input type="radio"/>            | <input checked="" type="radio"/> | <input type="radio"/>      | <input type="radio"/>      | <input type="radio"/>   |
| 6) The ETD revision should take into account greenhouse gas emissions in the definition of rates                       | <input checked="" type="radio"/> | <input type="radio"/>            | <input type="radio"/>      | <input type="radio"/>      | <input type="radio"/>   |

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|   |   |   |   |   |   |
|---|---|---|---|---|---|
| 7) The ETD should not tax greenhouse gas emissions if these are already subject to the carbon price of the EU Emissions Trading System (EU ETS)                           | / | • | • | • | • |
| 8) The ETD revision should introduce incentives for alternative energy sources (e.g. sustainable biofuels, clean hydrogen)  | / | • | • | • | • |
| 9) The ETD revision should support the objective to minimise the use of whole trees and food and feed crops for energy production, whether produced in the EU or imported | / | • | • | • | • |
| 10) Other   | • | • | • | • | • |

1. Somewhat agree: although the primary objective of the revision of the ETD should be to align the taxation of energy products with the new climate commitments, its revenue raising role cannot be underestimated.
2. Strongly agree: the ETD should refrain from taxing energy use in sectors/companies at risk of carbon leakage, to protect the competitiveness of EU industry.
3. Strongly agree: to achieve the EU climate goals by 2050, there is no space to allow further incentivization (or use) of fossil fuels.
4. Strongly agree: it is known that increases in energy taxes tend to fall disproportionately on low-income households. These negative effects must be mitigated to the extent possible.
5. Somewhat agree: accounting for the energy content of fuels can be a way of incentivising lower consumption and promoting energy efficiency and, as such, the possibility to tax fuels based on their energy component should be considered. However, as explained in the chapeau to this paper, we believe the main focus in setting the taxation rate should be on the CO<sub>2</sub> component.
6. Strongly agree: this is the primary objective of the revision, and it is key in steering consumer choice away from GHG-intensive fuels.
7. Strongly agree: to avoid any possible double taxation and therefore double burden on companies, the ETD should not tax installations already covered by the ETS. However, one key question remains: does the public consultation document refer to the EU ETS is its current state, or is it already accounting for its revision for Phase 4?
8. Strongly agree: alternative energy sources will significantly contribute to decarbonization and therefore should be incentivized.
9. Strongly agree: given the increasing importance that biofuels will gain, it can be expected that use of trees, food and feed crops will increase. However, forests will be key for carbon sequestration, and therefore it will be necessary to minimize this use.

## Section 5 Social Impact and Compensation Measures

*Which of the following accompanying measures do you consider as most relevant social policies?*

|  | a) Very relevant                 | b) Somewhat relevant             | c) Somewhat irrelevant | d) Strongly irrelevant           | e) Do not know        |
|--|----------------------------------|----------------------------------|------------------------|----------------------------------|-----------------------|
| 1) The reduction of other tax e.g. taxes on labour or social contributions   | <input checked="" type="radio"/> | <input type="radio"/>            | <input type="radio"/>  | <input type="radio"/>            | <input type="radio"/> |
| 2) Direct compensation to lower income groups via a lump sum   | <input checked="" type="radio"/> | <input type="radio"/>            | <input type="radio"/>  | <input type="radio"/>            | <input type="radio"/> |
| 3) Direct compensation to all households via lump sum  | <input type="radio"/>            | <input type="radio"/>            | <input type="radio"/>  | <input checked="" type="radio"/> | <input type="radio"/> |
| 4) Social welfare programs directed at poor households, reducing their energy costs for both home owners and rental dwellings  | <input checked="" type="radio"/> | <input type="radio"/>            | <input type="radio"/>  | <input type="radio"/>            | <input type="radio"/> |
| 5) Tax-free base/threshold for heating and electricity taxes for basis energy consumption. For instance, the first 1000 kWh and 100 GigaJoule for heating per year are not subject to energy taxation. | <input checked="" type="radio"/> | <input type="radio"/>            | <input type="radio"/>  | <input type="radio"/>            | <input type="radio"/> |
| 6) The possibility for lower taxation for local public transport should be kept  | <input type="radio"/>            | <input checked="" type="radio"/> | <input type="radio"/>  | <input type="radio"/>            | <input type="radio"/> |
| 7) No accompanying social measures are needed  | <input type="radio"/>            | <input type="radio"/>            | <input type="radio"/>  | <input checked="" type="radio"/> | <input type="radio"/> |
| 8) Other   | <input type="radio"/>            | <input type="radio"/>            | <input type="radio"/>  | <input type="radio"/>            | <input type="radio"/> |

1. Very relevant: the reduction of other taxes would mitigate the negative impacts of an increase in environmental taxes on the whole population.
2. Very relevant: lower income households should be supported, given that they will likely be disproportionately affected by the increase in energy prices resulting from a revision of the ETD. Direct compensation via lump sum would enable them to direct the money received to whatever area they need within the household.



3. Strongly irrelevant: higher income households will be less impacted by a revision upwards of the ETD. Compensating them would create an unfair redistribution of wealth among households.
4. Very relevant: low income households would not only benefit from direct compensation but also from social welfare programs aimed at, for instance, increasing appliances efficiency or completing energy-related home repairs.
5. Very relevant: introducing a tax-free base and thresholds for heating and electricity taxes could be a way of promoting energy saving and efficiency.
6. Somewhat relevant: the possibility for lower taxation for public transport could be maintained, provided it is accompanied by measures to encourage renewable and low-carbon fuels.
7. Strongly irrelevant: the revision of the ETD will certainly include “side effects” which must be considered and addressed.

### Section 6 Standard Rules for Taxation of Energy Products and Electricity

#### 6.1 Minimum tax rates

*Which options do you consider as relevant for minimum tax rates?*

- 1) The minimum tax rate of an energy product should be based on its energy content rather than on its volume or mass
- 2) The minimum tax rate of an energy product should be based on the amount of greenhouse gases emitted per Joule
- 3) The minimum tax rate of an energy product should be based on the cost on all their externalities such as greenhouse gases emissions, air polluting emissions and noise linked to their consumption
- 4) The minimum tax rates of energy products and electricity should be indexed yearly based on the average inflation of the EU
- 5) I do not know / I have no opinion

1) Including energy content in the minimum tax rate of fuels can be an incentive for energy saving and efficiency.

2) Given the assumption that the ETD’s main objective is environmental, the revision should explicitly address the carbon content/GHG content emitted per Joule.

4) Indexation ensures that minimum tax rates remain relevant over time. Introducing an indexation mechanism would facilitate the update of rates without having to go through a cumbersome administrative process each time the rates are to be revised.

## 6.2 Nominal Tax Rates

*Which option do you consider as most relevant for nominal tax rates?*

- 1) If a tax structure is introduced for minimum tax rates (e.g. tax structure based on energy content and/or on greenhouse gases emissions), then national nominal tax rates should follow the same structure
- 2) No constraint or restriction should apply to any national nominal tax rate beyond respecting the minimum rate threshold
- 3) I do not know / I have no opinion

1) This should be done with a view of harmonisation.

## **Section 7 Exceptions specific to some sectors of activity**

### 7.1 Agriculture, Fishery and Forestry

*Please select the proposal in the list below that is most relevant to you for Agriculture and Forestry:*



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- 1) No energy tax treatment exception, neither exemption nor differentiated rate, should be granted for any activity in agriculture and forestry
- 2) Energy tax treatment exceptions for agriculture and forestry should be granted but only for Heating use (e.g. heated greenhouses)
- 3) Energy tax treatment exceptions for agriculture and forestry should be granted but only for Motor fuel use
- ☒ 4) Energy tax treatment exceptions for agriculture and forestry should be granted for both Heating and Motor fuel uses
- 5) Energy tax treatment exceptions for agriculture and forestry should be kept as they are currently
- 6) I do not know / I have no opinion

4) Exceptions, in the form of differentiated rate, could be beneficial to these sectors. However, exemptions should not be granted.

*Please select the proposal in the list below that is most relevant to you for Fishery:*

- 1) No energy tax treatment exception, neither exemption nor differentiated rate, should be granted for any activity in fishery
- ☒ 2) Energy tax treatment exceptions for fishery should be kept as they are currently
- 3) I do not know / I have no opinion

2) "Energy tax treatment exceptions for fishery should be kept as they are currently"

## 7.2 Transport

### *7.2.1 Aviation*

*What is your opinion on the tax treatment of energy products and electricity for the aviation sector?*

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- 1) The current rules should be kept
- 2) There should not be a mandatory exemption for kerosene and other aviation fuels for flights between the EU and third countries, even if the possibility to tax them depends on the relevant bilateral Air Service Agreements
- 3) Kerosene and other aviation fuels for intra EU flights should be taxed with the standard rules on nominal and minimum rates for motor fuels
- 4) Kerosene and other aviation fuels for intra EU flights should be taxed as a motor fuel but at a lower rate
- 5) Taxing kerosene and other aviation fuels for intra EU flights would be counterproductive because of the risk of "tankering" (i.e. planes filling in their tank in third countries where fuel is not taxed)
- 6) Ticket taxes based on distance price should be introduced for Origin-Destination passengers (excluding transfer passenger)
- 7) Ticket taxes based on distance price should be introduced for all passengers (including transfer passengers)
- 8) The air transport of goods should be taxed in some other way, outside the scope of the Energy Taxation Directive, g. based on the airplane's weight
- 9) I do not know / I have no opinion

3) The exemption of kerosene and other aviation fuels from taxation results in an unfair advantage for aviation as a transport mode compared to rail and road transport. This results in air transport being cheaper and therefore perceived as more attractive than other modes by consumers. Shifting consumer preferences towards more sustainable ways of travelling will be essential in achieving the EU's climate targets, while also ensuring a level playing field across transport modes.

7) Ticket taxes could be a powerful incentive to shift consumer preferences, especially given the high number of short-haul intra-EU flights which could be easily substituted by land transport, particularly by rail, but which are currently preferred because of their cheaper price.

## 7.2.2 Waterborne Transport

*What is your opinion on the energy tax treatment of energy products and electricity for maritime transport?*

1) The current tax treatment of fuels used for maritime transport in EU waters should be kept, in particular given the risk of "tankering" (i.e. vessels filling in their tank in third countries where fuel is not taxed)

2) Fuels used for maritime transport should be taxed as motor fuel

☒ 3) Fuels used for maritime transport should be taxed as motor fuel but at a lower rate

4) I do not know / I do not have an opinion

3) Maritime transport is a cheap and efficient transport mode, specifically for cargo. A switch toward higher use of maritime transport could be incentivized through taxation at a lower rate, revised regularly for relevance.

*What is your opinion on the energy tax treatment of energy products and electricity for the navigation on inland waterways?*

1) The current tax treatment of fuels used for inland waterways transport should be kept

2) Fuels used for inland waterways transport should be taxed as motor fuel

☒ 3) Fuels used for inland waterways transport should be taxed as motor fuel but at a lower rate

4) I do not know / I have no opinion

3) As above.

*What is your opinion on the treatment of shore side electricity?*

1) SSE should be stimulated by regulation, for instance by an obligation to use shore side electricity in harbours when available

2) SSE should be stimulated by introducing the possibility to introduce a differentiated energy tax treatment (e.g. reduced tax rate) for shore side electricity

3) SSE should be stimulated by a mandatory zero rate (energy tax exemption) for shore side electricity

☒ 4) Instead of giving a special tax treatment for SSE, the use of fossil fuels on board of ship in harbours should be subject to energy taxation

5) I do not know / I have no opinion

4) SSE is not the only way in which the environmental impact of ships can be reduced. Therefore, instead of incentivizing this practice, the root problem should be tackled by taxing the use of fossil fuels on ships in harbours.

## 7.2.3 Road Transport

*What is your opinion on the tax treatment of diesel or other motor fuels used as a propellant for commercial purposes?*

☒ 1) Any motor fuel used in road transport should be taxed with the standard rules, whether used for commercial purposes or not.

2) Gasoil used for commercial purposes should be taxed as a motor fuel, but at a lower rate

3) I do not know / I have no opinion

1) To ensure a level playing field across all fuels, reduce emissions from road transport, and shift consumers towards more sustainable fuels, all motor fuels should reflect their carbon and energy content and should be taxed accordingly.



*What is your opinion on the tax treatment of electricity used in electric vehicles in road transport?*

- 1) There is no need for a specific treatment under the ETD
- 2) A specific lower tax rate should be introduced for this use of electricity for electric vehicles
- 3) An exemption should be introduced for this use of electricity in the ETD
- 4) Any specific treatment for electricity propelled vehicles would need to be phased out over time to preserve MS revenues from energy taxation
- 5) Other
- 6) I do not know / I have no opinion

3) Electricity is already taxed at production for its carbon content by the EU ETS. Therefore, to avoid policy overlaps and in light of incentivizing electromobility, there could be a specific exemption for this use of electricity for its energy content, while the carbon component is already covered and therefore should automatically be exempted.

## 7.3 Industry

*What is your opinion on the energy tax treatment of energy products in industry?*

- 1) The current energy taxation system should be kept
- 2) Special tax treatment for energy products and electricity used by industry should be restricted to industries which are at risk of carbon leakage as defined in the EU ETS
- 3) Energy products and electricity in the Industry sector should not be exempted when used for heating (including Combined Heat & Power generation), motor fuels and industrial processes
- 4) Energy products and electricity in the Industry sector should not be differentiated when used for heating (including Combined Heat & Power generation) and motor fuels
- 5) I do not know / I have no opinion

2) Industries at risk of carbon leakage should be exempted under the ETD at least for their carbon component, which is within the scope of the EU ETS. Considering that the EU ETS exempts these highly trade exposed sectors on the grounds of protecting their competitiveness, an exemption for their energy component under the ETD could also be considered.

Other industries, however, should be taxed on the energy component and exempted from the CO<sub>2</sub> content when they are covered by the EU ETS.

*What is your opinion on the EU rules for the taxation of energy products and electricity used in the Industry sector?*

1) Energy products and electricity consumption by industry should be taxed on the basis of the EU standard rules on nominal and minimum rates

2) Energy products and electricity consumption by industry should be taxed on the basis of the EU rules only for the energy content and not for the carbon content, because the latter is, for an important part, covered by the EU Emissions Trading System

3) The EU rules of energy taxation can depend on the quantitative consumption levels for electricity and energy products used for heating purposes, for example if you use more, you pay less per unit.

4) I do not know / I have no opinion

2) "Energy products and electricity consumption by industry should be taxed on the basis of the EU rules only for the energy content and not for the carbon content, because the latter is, for an important part, covered by the EU Emissions Trading System"

3) "The EU rules of energy taxation can depend on the quantitative consumption levels for electricity and energy products used for heating purposes, for example if you use more, you pay less per unit."

## 7.4 Production of energy products and of electricity

*To what extent do you agree with the following statements taking into account environmental and efficiency goals and the functioning of the internal market?*

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|  | a)<br>Strongly<br>agree          | b)<br>Somewhat<br>agree | c)<br>Somewhat<br>disagree       | d)<br>Strongly<br>disagree       | e)<br>Do<br>not<br>know          |
|--|----------------------------------|-------------------------|----------------------------------|----------------------------------|----------------------------------|
| 1) The relevant provisions of the Energy Taxation Directive (ETD) are sufficiently comprehensive also in relation to the new technologies (e.g. production of hydrogen, biofuels, synthetic fuels, e-fuels, etc.)  | <input type="radio"/>            | <input type="radio"/>   | <input type="radio"/>            | <input checked="" type="radio"/> | <input type="radio"/>            |
| 2) The provisions related to the tax exemption for energy products used to produce energy products and the uses of energy products and electricity considered out of scope (e.g. industrial processes such as chemical reduction, electrolytic, metallurgical, mineralogical processes, dual use, etc.) are sufficiently clear and comprehensive | <input type="radio"/>            | <input type="radio"/>   | <input type="radio"/>            | <input type="radio"/>            | <input checked="" type="radio"/> |
| 3) The mandatory exemption for energy products for electricity production, which can be waived for reasons of environmental policy, is sufficiently clear and comprehensive  | <input type="radio"/>            | <input type="radio"/>   | <input type="radio"/>            | <input type="radio"/>            | <input checked="" type="radio"/> |
| 4) The ETD can play a significant role in supporting production of energy from renewable sources   | <input checked="" type="radio"/> | <input type="radio"/>   | <input type="radio"/>            | <input type="radio"/>            | <input type="radio"/>            |
| 5) The ETD should particularly support self-consumption and small producers of electricity coming from renewables  | <input type="radio"/>            | <input type="radio"/>   | <input type="radio"/>            | <input type="radio"/>            | <input checked="" type="radio"/> |
| 6) The possibility of granting tax exemptions or reductions related to combined heat and power generation (CHP) should be restricted   | <input type="radio"/>            | <input type="radio"/>   | <input checked="" type="radio"/> | <input type="radio"/>            | <input type="radio"/>            |

1. Strongly disagree: new technologies that will be key in achieving the EU's climate targets are not sufficiently, if at all, provided for in the current version of the ETD.
2. Do not know
3. Do not know
4. Strongly agree: by mainly focusing on the carbon component, the ETD can support the production of renewable energy.



5. Do not know

6. Somewhat disagree: CHP can contribute to improving energy efficiency. Therefore, the possibility of granting tax exemptions or reductions for CHP should not be restricted.

## Section 8 Lower Carbon products and applications

*In your opinion, should the Energy Taxation Directive ensure differentiated tax treatment for low-carbon fuels and applications that drive the EU's green transition?*

☒ 1) Yes

☐ 2) No

☐ 3) I do not know / I have no opinion

“Yes”: taxation can be a powerful incentive in changing behavior. The ETD should take advantage of its position by granting a differentiated tax treatment for low-carbon fuels and applications with a view of mainstreaming them and accelerating the EU's green transition.

*In the absence of a tax structure for minimum tax rates (including energy content and/or greenhouse gases emissions), do you think that the Energy Taxation Directive need differentiated tax treatment for selected fuels (e.g. advanced biofuels and synthetic fuels) and applications?*

☒ 1) Yes

☐ 2) No

☐ 3) I do not know / I have no opinion

“Yes”: in the absence of a tax structure for minimum rates, differentiated tax treatment can promote the uptake of selected fuels.