



Council of the
European Union

074766/EU XXVI. GP
Eingelangt am 12/09/19

Brussels, 12 September 2019
(OR. en)

12154/19

FISC 363
ECOFIN 793
ENER 434
CLIMA 237
MI 643
ENV 769
TRANS 438

COVER NOTE

From: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 11 September 2019

To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of
the European Union

No. Cion doc.: SWD(2019) 332 final

Subject: COMMISSION STAFF WORKING DOCUMENT EXECUTIVE SUMMARY
OF THE EVALUATION of the **Council Directive 2003/96/EC of 27
October 2003 restructuring the Community framework for the taxation
of energy products and electricity**

Delegations will find attached document SWD(2019) 332 final.

Encl.: SWD(2019) 332 final



Brussels, 11.9.2019
SWD(2019) 332 final

COMMISSION STAFF WORKING DOCUMENT
EXECUTIVE SUMMARY OF THE 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) 329 final}

EXECUTIVE SUMMARY

This evaluation assesses the performance of Directive 2003/96/EC¹ ('Energy Taxation Directive' or ETD) against the evaluation criteria set out by the Better Regulation Guidelines². The evaluation was carried out in the framework of a Commission's Regulatory Fitness and Performance (REFIT) programme.

The ETD identifies the energy products subject to the harmonised rules for excise duties, sets minimum levels of taxation and lays down the conditions for applying tax exemptions and reductions. In principle, the Member States are free to apply excise duty rates above these minimum levels of taxation, according to their own national needs and environmental ambitions. All revenues from excise duties entirely go to the budget of the Member States.

The primary objective of the ETD is to support the proper functioning of the internal market by avoiding double taxation and other distortions of trade and competition between energy sources and energy consumers and suppliers. In addition, the ETD also intended to contribute to the achievement of a wide range of EU policies, in fields such as environment, energy and climate change while maintaining the competitiveness of EU companies, redirecting fiscal policy to combat unemployment and contributing to the revenue stream for Member States' budgets.

However, using the ETD as an instrument to contribute to the achievement of these secondary objectives was left at the discretion of the Member States in the form of optional exemptions and reductions. In general, the Directive was devised to leave considerable flexibility for Member States to design their energy taxation systems in a way that was appropriate to their national circumstances.

Since the adoption of the ETD in 2003, energy markets and technologies in the EU experienced significant developments:

- The share of renewable energy in the EU's energy mix has tripled, reaching 18%.
- The share of renewable electricity has increased from 13% to 31%³.
- The consumption of biofuels has increased 10-fold. The share of biofuels in transport grew from virtually zero to almost 5%⁴.
- Several new products including hydrogen and synthetic gases entered the market.

At the same time, the EU's international commitments, including the Paris Agreement⁵, as well as the EU's regulatory framework have also evolved. The EU's Energy Union⁶ aims to complete a fully integrated EU energy market, to increase energy efficiency, to

¹ [Council Directive 2003/96/EC](#) of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity (OJ L 283, 31.10.2003, pp. 51-70).

² [Better Regulation Guidelines](#)

³ [Eurostat SHARES tool](#)

⁴ [DG Energy - Statistical Country Data sheets](#)

⁵ [The Paris Agreement](#)

⁶ [Energy Strategy and Energy Union](#)

reduce the EU's dependency on imports and cut emissions and to continue to lead global efforts to fight climate change. The "Low-Emission Mobility Strategy"⁷ and the Energy Union's implementation strategy, the "Clean Energy for All Europeans"⁸ package, provide a comprehensive legislative framework that forms a robust basis for the EU to deliver on its 2030 climate and energy targets⁹ of:

- reducing greenhouse gas emissions domestically by at least 40 % compared to 1990 levels;
- reaching a share of at least 32% for renewable sources in the EU's energy mix and
- increasing energy efficiency by at least 32.5%.

In this context, the evaluation assessed the ETD against the five evaluation criteria of effectiveness, efficiency, relevance, coherence and EU added value:

- I. The effectiveness section analyses the progress made towards achieving the main objective set by the ETD. The evaluation finds that, at present, the contribution of the minimum levels of taxation as set by the ETD to the smooth functioning of the single market is limited. The converging effects of rates on petrol and gas oil used as propellant fuels were stronger at the time of the initial implementation of the ETD in 2003 and at the time of new countries joining the EU in 2004. However, the ETD's impact of approximating rates has been diminishing ever since. The ETD rates on electricity and natural gas account for such an insignificant share of their respective final prices, that they can have no positive impact on the internal market. At the same time, the highly divergent national implementation of the ETD and the widespread use of optional tax exemptions has resulted in the fragmentation of the internal market.
- II. The section on efficiency examines the relationship between the resources required by a policy intervention and the changes generated by the intervention. The evaluation concludes that ETD did not lead to any considerable regulatory burden or costs for the Member States or the economic operators.
- III. The relevance section aims to determine whether there is a gap between the current needs of the Member States and economic operators and the objectives the ETD was designed to address. The ETD has not been revised since its adoption although, over the years, the underlying policy objectives have changed substantially (e.g. due to changing mobility patterns, emergence of new technologies and uses and the increased importance of environmental policy). Therefore, the evaluation concludes that the ETD is no longer in line with the current use of energy products, particularly as it covers a continuously shrinking share of the EU's energy mix.
- IV. The coherence section examines the alignment and compatibility of the ETD to related EU policies, and international agreements. The findings indicate that possible synergies from the alignment of the ETD to other policy

⁷ A European Strategy for Low-Emission Mobility ([COM\(2016\) 501 final](#)), 20 July 2016

⁸ Clean Energy for All Europeans ([COM\(2016\) 860 final](#)), 30 November 2016

⁹ EU 2030 [targets](#)

objectives are not exploited. The ETD contributes to a limited extent to a wider set of the current EU economic, social and environmental policy objectives. The evaluation identifies overlaps, gaps and inconsistencies that hamper the achievement of the EU objectives in the field of energy, environment, climate change and transport. Mandatory sectoral exemptions as well as optional exemptions and reductions granted by Member States possibly contradict other EU policies. In addition, the relation between the ETD and the EU ETS could be improved, to foster cost-effective emissions reductions.

- V. The EU added value evaluation criterion examines the developments that have resulted from the EU policy intervention represented by the ETD, compared to what could have been delivered by national actions of the Member States or no action. The EU added value of the ETD for the functioning of the single market is hampered by the lack of indexation of the minimum rates and the extensive and highly divergent use of optional exemptions by the Member States.

In general, it can be concluded that at the time of its adoption, the ETD represented a positive contribution to the EU legislative framework by establishing harmonised common rules at the EU level for the taxation of energy products used as motor fuel and heating fuel and of electricity.

However, the ETD remained unchanged while technologies, energy markets and the EU legislative framework evolved over the past 15 years. Consequently, today significant misalignment exists between the ETD and all these areas.