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NOTE

From: Presidency
To: Permanent Representatives Committee/Council
Subject: Proposal for a Council Directive restructuring the Union framework for the taxation of energy products and electricity (recast)
- Policy debate

In order to guide the policy debate which will take place during the Council (Economic and Financial Affairs) on 6 December 2022, the Presidency has prepared a note with questions as set out in the Annex below.

The Permanent Representatives Committee is invited to take note of the Presidency's note and questions, and to forward them to the Council for the above mentioned policy debate.

The Council (Economic and Financial Affairs) is invited to hold a policy debate based on the questions prepared by the Presidency.

Revision of the Energy Taxation Directive**Presidency Note****I. INTRODUCTION**

1. On 14 July 2021, the Commission submitted a proposal for a Council Directive restructuring the Union framework for the taxation of energy products and electricity (recast)¹ ('the ETD proposal').
2. The ETD proposal is an integral part of the Fit for 55 package² and therefore contributes to implement the ambitious EU targets of reducing emissions by at least 55 % by 2030, as compared to 1990 levels, and to achieve climate neutrality by 2050.
3. The ETD proposal has the following objectives:
 - (a) providing an adapted framework contributing to the achievement of the EU 2030 targets and to climate neutrality by 2050 in the context of the European Green Deal; this would involve aligning the taxation of energy products and electricity with EU energy, environment and climate policies, thus contributing to the EU's efforts to reduce emissions;
 - (b) providing a framework that preserves and improves the EU's internal market by updating the scope of taxable energy products and the structure of rates and by rationalising the use of tax exemptions and reductions by Member States; and
 - (c) preserving the capacity to generate revenue for the Member States' budgets.
4. The European Economic and Social Committee adopted its opinion on 20 January 2022³ and the Committee of the Regions adopted its opinion on 27 April 2022⁴. The opinion of the European Parliament is pending.

¹ 10872/21

² 10849/21

³ 5615/22

⁴ <https://webapi2016.COR.europa.eu/v1/documents/cor-2021-04801-00-00-ac-tra-en.docx/content>

II. STATE OF PLAY

5. The technical analysis of the ETD proposal was launched in the Working Party on Tax Questions (Indirect Taxation – Excise Duties / Energy Taxation) (‘WPTQ’) in September 2021. Under the Slovenian Presidency on 7 December 2021, the Council (Economic and Financial Affairs) took note, as an ‘A’ item, of the Presidency progress report on the Fit for 55 package proposals dealt with by the ECOFIN Council, including the ETD proposal⁵. Under the French Presidency on 17 June 2022, the Council (Economic and Financial Affairs) took note, as an ‘A’ item, of the Presidency progress report on the ETD proposal⁶.
6. Building on the progress made by the previous Presidencies, the Czech Presidency carried out intensive work on the ETD proposal. The objective of the Czech Presidency was to make as much progress on this file as possible. The technical examination of the proposal in the WPTQ took place on 19 July, 12 September, 12 October, 10 November and 17 November 2022.
7. In July 2022, the Czech Presidency submitted a compromise text covering the whole ETD proposal and prepared revised compromise texts for the subsequent WPTQ meetings. The latest Presidency compromise text is set out in document WK 14524/2022.
8. The Czech Presidency provided extensive explanations to the WPTQ, including in the form of background notes on specific topics, which were appreciated by delegations. The Czech Presidency addressed a wide variety of issues raised by delegations, managed to converge views and to find compromise solutions, while respecting the EU long-term environmental targets.

⁵ 14574/21

⁶ 9874/22

9. Some of the most discussed topics during the Czech Presidency, where, overall, broad support was given by the Member States, were the following:
- (a) the withdrawal of the principle of ‘equal level of taxation’ within the same category of products, in order to give Member States more flexibility for establishing their tax policies in light of the sufficient attainment of the environmental objectives through the vertical ranking of categories, and to avoid paradoxical situations where national tax rates on products would have to be lowered, thus decreasing tax revenues in some Member States;
 - (b) taxing electricity independently without any reference to energy products in order to allow Member States to apply a more tailored tax policy;
 - (c) tax treatment of the most sensitive products, including the possibility of applying time-limited derogations for those products (biomass, natural gas, liquefied petroleum gas, hydrogen, etc.), in order to provide Member States with more flexibility for adaptation;
 - (d) reintroduction of the concept of taxation of electricity and natural gas depending on their quantitative consumption levels and use for business or non-business purposes;
 - (e) gradual increase of EU minimum level of taxation (in two steps) in order to give Member States higher level of legal certainty and to reduce administrative burden for national transposition;
 - (f) providing Member States with the possibility to a certain extent to define the concept of vulnerable households, taking into account national circumstances, and the social angle in general;
 - (g) definitions of renewable and low-carbon products, in particular integrating the definitions into the ETD rather than referring to non-tax legal acts;
 - (h) the tax treatment of mixed products, in particular the adaptation of the system to practical needs of businesses and tax administrations, making the system more robust as regards tax fraud and improving its legal certainty;
 - (i) clarification of definitions of metallurgical and mineralogical processes and setting the time framework for their taxation;
 - (j) introduction of an option for Member States to apply taxation on electricity used for railway transport, metro, tram and trolley bus at a later stage.

While the Czech Presidency is of the view that the discussion on the above-mentioned topics proceeded in an effective way at the WPTQ level, there remains some technical work to achieve solutions acceptable to all Member States. Some Member States are not yet in a position to support the Presidency text or have scrutiny reservations. Nevertheless, the majority of Member States expressed a positive opinion on the suggested changes and the way forward.

10. Some of the topics discussed during the Czech Presidency, where progress was made to a certain extent, but further work is still needed, are the following:
 - (a) the pace of the gradual implementation of the new rules and of the abolition of some exemptions for the aviation and maritime sectors, including fisheries, while also considering geographical specificities of Member States;
 - (b) the EU minimum levels of taxation taking into account the environmental objectives of the ETD proposal (for example a gradual, two-step approach has been discussed but so far no debate was launched on the exact levels of taxation);
 - (c) more time for adaptation to the new rules through different transitional periods, which should be considered together within the whole framework of the future ETD and also in the context of the current geopolitical circumstances and the energy mix of Member States;
 - (d) the interaction of the future ETD with other files included in the Fit for 55 package, such as the revision of the EU Emissions Trading System⁷, and with the state aid rules (in particular the General Block Exemption Regulation currently being revised).

Despite the intensive work carried out on the ETD file, the complexity of the file has impeded an agreement so far. However, the Czech Presidency is of the view that the Member States are committed to continue the work on the file, in particular on the above-mentioned topics, in order to find compromise solutions and ultimately to reach a unanimous agreement as soon as possible.

⁷ 10875/21

III. QUESTIONS TO THE MINISTERS

11. In the light of the above and in order to get political guidance on the way forward on the ETD file, Ministers are invited to express their views on the following questions prepared by the Presidency:

1) Do you agree that further work should build on the progress made so far on the ETD file, enabling the Member States to comply with the long-term EU environmental targets, and at the same time providing the Member States with sufficient flexibility, taking into account their national tax systems, while ensuring the smooth functioning of the internal market?

2) Underlining the fact that the ETD file is a part of the Fit for 55 package, do you agree that the future work should seek to reach a compromise striking a balance between the EU minimum levels of taxation and the length of transitional periods to accommodate the Member States' economic, geopolitical, geographical and social circumstances, in particular in relation to the most sensitive sectors?
