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COVER NOTE

From: Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director

date of receipt: 15 July 2021

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

Subject: Proposal for a COUNCIL DIRECTIVE restructuring the Union framework for the taxation of energy products and electricity (recast)

- Regulatory scrutiny board opinion

Delegations will find attached document SEC(2021) 663 final.

Encl.: SEC(2021) 663 final



EUROPEAN COMMISSION

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SEC(2021) 663

REGULATORY SCRUTINY BOARD OPINION

Proposal for a Council Directive

restructuring the Union framework for the taxation of energy products
and electricity (recast)

{COM(2021) 563}

{SWD(2021) 641}

{SWD(2021) 642}



EUROPEAN COMMISSION
Regulatory Scrutiny Board

Brussels,
RSB

Opinion

Title: Impact assessment / Revision of the Energy Tax Directive

Overall opinion: POSITIVE WITH RESERVATIONS

(A) Policy context

The Energy Taxation Directive (2003/96/EC) (ETD) lays down EU rules for the taxation of energy products used as motor or heating fuels and electricity. It sets minimum rates to avoid harmful energy tax competition among Member States. The Directive also aims to allow Member States to use energy taxation to support other policies, such as environmental protection, climate objectives, energy efficiency, etc.

An evaluation of the Directive in 2019 found that it is no longer fit for purpose, given changes in energy markets and technology, and the strengthened EU commitments on climate and environment. The proposed revision of the Energy Taxation Directive is part of the European Green Deal. It will form part of the 'Fit for 55 Package' of proposals to deliver on the EU's enhanced climate ambitions.

B) Summary of findings

The Board notes the useful additional written information provided in advance of the meeting and commitments to make changes to the report.

However, the report still contains significant shortcomings. The Board gives a positive opinion with reservations because it expects the DG to rectify the following aspects:

- (1) The report does not sufficiently explain the coherence between the Energy Taxation Directive and other 'Fit for 55' initiatives, in particular the Emissions Trading System (ETS).**
- (2) The report is not sufficiently clear on its objectives. In particular, it does not clearly determine to what extent revenue raising is an objective. It does not sufficiently explain possible conflicts between fiscal and environmental targets.**
- (3) The report does not sufficiently justify some of the proposed minimum rates and why alternative packages of measures were not explored under the preferred option(s).**
- (4) The analysis of impacts on employment, international competitiveness and air**

This opinion concerns a draft impact assessment which may differ from the final version.

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pollution is not sufficiently developed.

(C) What to improve

(1) The report should better explain how the objectives of the ETD have evolved to include environmental and climate policy objectives. It should better explain the coherence of the ETD with other initiatives in the 'Fit for 55' package, and in particular the ETS. It should further develop how these instruments interplay and what the optimal combination of the instruments and their ambition levels should be. It should explain how the ETD will contribute to reaching the agreed targets in the most cost-efficient way. It should clarify to what extent the success of the other 'Fit for 55' initiatives will be dependent on this one, and vice-versa.

(2) The report should nuance its finding that the current minimum tax rates no longer serve their purpose to prevent a race to the bottom. For several energy products, many countries are still at or close to the minimum rates. The report could better explain that avoiding a race to the bottom is not sufficient to harmonise rates, unless the minimum rates are set at a sufficiently high level, which is currently not the case.

(3) The report should clarify the Directive's role in generating energy tax revenues. It should consider introducing an objective on tax collection, as a basis for the analysis of tax revenues in the comparison of options.

(4) The report should better explain the rationale for some proposed minimum rates. It should clarify the evidence behind the concept of 'environmental performance' that determines the minimum rates. In this context, it should better justify the proposed rates for the primary sector, aviation and maritime transport. It should specify how it proposes to tax cargo-only flights within the EU and sustainable airline fuel. The report should better explain how the indexation of minimum rates to inflation would affect effective taxation. It should discuss whether there are plausible alternative combinations of key policy design measures (in terms of minimum rates, scope extension or removal of differentiations, reductions and exemptions) under the preferred option(s) that might become politically relevant and, if so why such variants were not assessed.

(5) The report should reinforce its analysis of impacts on employment, international competitiveness and air pollution. It should expand the economic impact analysis for energy intensive and transport sectors (in particular air transport), including on their international competitiveness. It should differentiate between the equity effects on households and Member States. The report should better explain regulatory costs and benefits. In particular, it should clarify the consequences of the initiative on administrative costs. The report should expand on the distribution across affected groups.

(6) The report should strengthen its analysis on why the options that also tax air pollution perform worse than the preferred option(s). The comparison of options should better recognise the benefits of reduced air pollution, and balance them against negative distributional effects. The analysis could consider transition periods for the introduction of such a tax, take into account the local character of some emissions, and reflect the effects on technical innovation.

The Board notes the estimated costs and benefits of the preferred option(s) in this initiative, as summarised in the attached quantification tables.

Some more technical comments have been sent directly to the author DG.

(D) Conclusion

The DG must revise the report in accordance with the Board's findings before launching the interservice consultation.

If there are any changes in the choice or design of the preferred option in the final version of the report, the DG may need to further adjust the attached quantification tables to reflect this.

Full title	Proposal for a revision of Directive 2003/96/EC restructuring the Community framework for the taxation of energy products and electricity
Reference number	PLAN/2020/6493
Submitted to RSB on	19 February 2021
Date of RSB meeting	17 March 2021

ANNEX: Quantification tables extracted from the draft impact assessment report

The following tables contain information on the costs and benefits of the initiative on which the Board has given its opinion, as presented above.

If the draft report has been revised in line with the Board's recommendations, the content of these tables may be different from those in the final version of the impact assessment report, as published by the Commission.

<i>I. Overview of Benefits (total for all provisions) – Preferred Option 2a</i>		
<i>Description</i>	<i>Amount</i>	<i>Comments</i>
<i>Direct benefits</i>		
Contributing to the EU 2030 targets and climate neutrality by 2050 in the context of the European Green Deal	Change in EU 27 emissions in 2035 compared to the baseline: <ul style="list-style-type: none"> • GHG: -2,2% • NOx: -2,1% • PM2.5: -2,6% • SO2: -1,9% (see the relevant section on impacts of the policy options, results on option 2a)	By reducing emissions, the ETD will enable the EU to achieve its increased targets for 2030 and become carbon neutral by 2050
Preserving the EU internal market and ensure fair competition	The introduction of the new minima and the broadening of the tax base will contribute to greater convergence of effective tax rates across Member States (see the relevant section on impacts of the policy options, results on option 2a)	The envisaged provisions on product coverage, tax rates and taxable base aims at fostering more harmonised rules to the benefit of the internal market (and national administrations, economic operators, citizens)
Budgetary impacts	Revenues in Member States are expected to increase. The evolution in EU27 of total tax revenues is expected as follows: <ul style="list-style-type: none"> • +34% in 2035 corresponding to c. 32 billion EUR • This additional revenue compensates for around 70% of the loss in revenue projected under the baseline (see the relevant section on impacts of the policy options, results on option 2a)	Due to the widened product coverage, increased minimum rates and enlargement of taxable base, revenues generated from energy taxation are expected to increase significantly.
Equity	Equity has been taken in due consideration in the policy design for the revision of the current legal system <ul style="list-style-type: none"> • The relative contribution towards GHG reduction differs noticeably among Member States. • The same holds for the increase in revenues. • In general, lower income Member States, which have lower national rate, will be the most affected. • The effect on income distribution is of small magnitude and seems just slightly larger in the first half of the income distribution. (see the relevant section on impacts of the policy options, results on option 2a)	As expected due to the very different national situations the proposed option will have distributional impact. This is one of the reasons why some changes are proposed following a transitional period of implementation.
Coherence with other initiatives of 'Fit for 55' Package and other relevant EU policies	The preferred option is fully coherent with other initiatives of 'Fit for 55' Package and relevant EU policies. (see the relevant section on impacts of the policy	This option does not overlap with but in fact usefully complements other policy actions under the 'Fit for 55' Package.

	options, results on option 2a)	
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<i>II. Overview of costs – Preferred option 2a</i>							
		Citizens/Consumers		Businesses		Administrations	
		One-off	Recurrent	One-off	Recurrent	One-off	Recurrent
Increase in effective taxation in the economy (GDP, employment, distributional effects, etc.)	Direct costs	- Loss of employment by 0.2% at EU 27 level	- Increase in household heating and transport prices	- Cost increase due to reduced exemptions	- Increase in fossil fuel prices	None	None
	Indirect costs						
Action	Direct costs	None as stated in the evaluation report					
	Indirect costs	None as stated in the evaluation report					