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Delegations will find attached the abovementioned opinion. Other language versions will become available on the following website:

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# OPINION

European Economic and Social Committee

## Revision of the Energy Taxation Directive (ETD)

Proposal for a Council Directive restructuring the Union framework for the taxation of energy  
products and electricity (recast)

[COM(2021) 563 final – 2021/0213 (CNS)]

**ECO/565**

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Referral	Council of the European Union, 21/09/2021
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Section responsible	Economic and Monetary Union and Economic and Social Cohesion
Adopted in section	14/12/2021
Adopted at plenary	20/01/2022
Plenary session No	566
Outcome of vote (for/against/abstentions)	192/6/15

## 1. Conclusions and recommendations

- 1.1 The EESC welcomes the objective of the proposal, because it updates and seeks to clarify the framework of the 2003 Directive and because it seeks to structure taxation in a way that favours sustainable non-fossil energy.
- 1.2 The EESC regrets that the taxation of biofuels under the proposal is too rigidly linked to the categorisation made in the Renewable Energy Directive (RED) and believes that the scarcity of alternative fuels and the ensuing high cost level call for a more flexible attitude on admissible biofuels, including with regard to the minimum taxation level, which should be much lower than that applicable to fossil fuels.
- 1.3 The EESC considers that the increased minimum tax level may have negative social effects, causing energy and mobility poverty, and is pleased to note that Member States may go below minimum levels for heating fuel and electricity used by vulnerable households and organisations recognised as charitable and that a ten-year total exemption from taxation for heating fuel and electricity used by "vulnerable households" is proposed.
- 1.4 The EESC recommends using the notion of "energy precarity", which is a qualitative phenomenon (perception of cold, humidity, comfort level) as well as a quantitative one (energy costs, poverty threshold), and cannot be treated solely in terms of its quantitative aspects, as the proposal for a Directive does with the notion of "vulnerable household".
- 1.5 The EESC highlights that environmental taxation must also clearly pursue social objectives, in the interest of its social acceptability; wherever the question arises of the redistribution of tax revenues, the Committee recommends that the proceeds of such taxes be returned, for example, to the people most heavily affected.
- 1.6 The EESC emphasises that financial difficulties arising from energy costs are currently under the spotlight in many Member States. The EESC believes that significant contributions to resolving these problems can be made by substantially increasing investment in renewable energies and adjusting the European pricing system to ensure that it reflects the price of all forms of energy, including the cheapest ones. This requires changing the current system of auctions in the wholesale electricity market.
- 1.7 The EESC also warns of the risk of negative effects on the competitiveness of European industry and notes that the Commission proposes enabling Member States to grant tax reductions the consumption of energy products used for heating in favour of energy-intensive business or where agreements are concluded with business entities or associations to improve energy efficiency. This possibility is essential to preserve competitiveness of EU industry given that most economies outside the EU have so far failed to adopt tangible climate measures.
- 1.8 The EESC also regrets that the Commission proposal has in principle removed the possibility to differentiate the minimum taxation rates between business and consumers.

- 1.9 The EESC finds the reduction possibilities granted for the transport of goods and passengers inadequate, since they exclude road transport and do not respect the principle of technical neutrality. The EESC would have preferred a general exemption or reduction for goods transport and for enterprises with significant export business to third countries.
- 1.10 The EESC highlights in this context the Commission's proposal to harmonise tax levels between diesel and petrol. This means a cost increase for goods transport, which could be compensated for through a general reduction in taxes on fuels used in goods transport. The same reasoning applies to the disappearance of the distinction between commercial and non-commercial diesel.
- 1.11 The EESC also points out that the dedicated tax reduction possibilities provided for in Articles 8(2) and 18 regarding certain types of equipment and energy-intensive industries are extremely selective and could, given their discretionary nature, cause the same kind of tax competition that the Commission proposal seeks to eliminate.
- 1.12 Regarding the added value of extending taxation to aviation and waterborne transport inside the EU, the EESC underlines the importance of equally concentrating other productive ways to promote improved sustainability in these modes. With respect for instance to aviation, new and sustainable means of propulsion are being developed, and dedicated means to promote those should be focused on.
- 1.13 The EESC considers that the provisions on maritime transport and aviation do not take sufficient account of the situation of island countries, countries with extensive archipelagos and countries with long distances and sparsely populated regions.
- 1.14 The EESC also notes that it has been left to Member States to decide whether they want to make extra-EU air navigation and waterborne navigation subject to the same levels of taxation as apply inside the EU or to make them exempt from such operations. The EESC is highly critical of this provision, as it may encourage Member States to go it alone regarding the taxation of these modes; instead, it is primarily worldwide solutions that should be promoted, as unilateral action may cause serious complications.

## **2. Background to the opinion, including the legislative proposal concerned**

- 2.1 As part of the "Fit for 55" package, the Commission has submitted a proposal for a Council Directive restructuring the Union framework for the taxation of energy products and electricity (recast) , recasting the current Directive [2003/96/EC](#) on the same subject.
- 2.2 As a reason for making the proposal, the Commission has invoked the need to introduce clear taxation rules for energy products and electricity to make sure they continue to contribute to the smooth functioning of the internal market, while at the same time tackling the climate- and environment-related challenges that are offered by the Green Deal. Energy taxation can contribute to the ambition set out in the European Climate Law, which states that CO<sub>2</sub> emissions should be reduced by at least 55% by 2030 as compared to 1990 by ensuring that the taxation of motor fuels, heating fuels and electricity better reflects their impact on the environment and health.

- 2.3 Therefore, new higher minimum levels of taxation are proposed and the possibilities for Member States to grant exemptions reduced and more circumscribed. Furthermore, aviation and maritime fuels are made subject to taxation with respect primarily to most intra-EU operations, with an option for the Member States to exempt or apply the same level of taxation to extra-EU air or waterborne navigation.
- 2.4 The proposal is part of the "Fit for 55" package. As it is an expression of the "polluter pays" principle, there is a strong link to the ETS system and the proposal to update that system, also part of the package.

### 3. General comments

- 3.1 The EESC welcomes the objective of the proposal, both because it updates and seeks to clarify the framework of the 2003 Directive and because it seeks to structure taxation on energy products and electricity used as heating or motor fuels in a way that favours sustainable non-fossil energy.
- 3.2 The EESC notes that, whereas there is no formal CO<sub>2</sub> emission element in the tax levels proposed, the proposed taxation structure would nevertheless have a similar effect, given that the highest minimum taxation levels are set for CO<sub>2</sub>-emitting fossil fuels.
- 3.3 The EESC in this context regrets that the taxation of biofuels under the Proposal is too rigidly linked to the categorisation made in the Renewable Energy Directive (RED) . The EESC believes that the scarcity of alternative fuels and the ensuing high-cost level call for a more flexible attitude on admissible biofuels, both with respect to RED II, which is not the subject of this opinion, and with regard to the minimum taxation level, which should be much lower than that applicable to fossil fuels.
- 3.4 The EESC takes the view that the increased minimum tax level may have negative social effects, causing energy and mobility poverty. Clearly, this issue was considered by the Commission when authorising the Member States to go below minimum levels for heating fuel and electricity used by households and organisations recognised as charitable and when authorising a ten-year total exemption from taxation for heating fuel and electricity used by "vulnerable households", as defined in Article 17 c). The EESC regrets that similar measures are not included to avoid mobility poverty. The possibilities for reduction proposed for public transport and for modes other than road transport are not helpful in this context.
- 3.5 The social reality of green taxation is twofold: on the one hand, it does not affect all households in the same way, and it is often the most vulnerable and the middle-class households that have the highest energy costs proportionate to their income.
- 3.6 The EESC underscores that, even though the Commission takes the view that the social aspect of its proposal is taken into account in the social part of the legislative package – that is, the proposal for a Regulation establishing the "Social Climate Fund" – no dedicated impact analysis has been carried out with respect to this proposal for a Regulation (see the text of the proposal for a Regulation). Instead, the proposal is based on the impact assessment underpinning the 2030 Climate Target Plan and that supporting the revision of the ETS Directive.

- 3.6.1 The structure of the fund also brings up some questions. Only part of the fund will be earmarked for social compensation; the rest will be devoted to promotional measures in favour of electric vehicles as well as to investment in recharging infrastructure and decarbonisation of buildings. The EESC doubts whether low-income households will benefit from such measures, bearing in mind that support measures for electric vehicles will rather be for the benefit of more well-off households.
- 3.6.2 In the opinion of the EESC, designing a just and efficient compensation mechanism that takes various inequalities into account is a complex objective to which the "Social Climate Fund" does not really respond; a relatively poor country with insignificant inequalities could receive less money from the fund than a rich country with considerable inequalities.
- 3.7 The EESC holds that the impact analysis of the proposal for a Directive is not sufficiently developed. It underscores that, in fact, environmental taxation carries a double social cost: it does not impact all households in the same manner, and it is often the most precarious households and those in the middle classes that have the highest energy costs relative to their income.
- 3.8 The EESC holds that the proposal for a Directive should establish a clearer notion of the term "precarity"; indeed, Article 17 of the proposal provides that, "'vulnerable households' shall mean households significantly affected by the impacts of this Directive which, for the purpose of this Directive, means that they are below the 'at risk of poverty'" threshold, defined as 60% of the national median equivalised disposable income".
- 3.9 Since 2009, with the Directive concerning common rules for the internal market in electricity, the concepts of energy precarity and poverty have been in use: the "energy poor" are customers/households with limited access to energy (mainly gas and electricity). The term "energy precarity" refers to individuals or households whose resources and housing conditions do not allow them to access adequate energy supplies to provide a minimum level of comfort.
- 3.9.1 The EESC wonders why the recast of the Energy Taxation Directive introduces the criterion of "60% of the national median equivalised disposable income", even though the concept of fuel poverty is more suited to this purpose and is also multidimensional, encompassing:
- household economic poverty (income, non-energy costs);
  - the risks associated with energy supply (high and volatile prices, the quality of energy plants);
  - the state of disrepair of buildings, or their geographical isolation, the lack of public transport, etc., often linked to transport-related obligations (fixed distance between home and work).
- 3.9.2 Each one of these weaknesses will create energy precarity.

- 3.9.3 The EESC recommends using the notion of "energy precarity", which is a qualitative notion (perception of cold, humidity, comfort level) as well as a quantitative one (energy costs, poverty threshold), and cannot be understood solely in quantitative terms as the proposal for a Directive does regarding the notion of "vulnerable households".
- 3.9.4 The EESC stresses that social schemes to support people with low incomes must not be based on the principle of strict thresholds as these lead to unjustified differences in the treatment of people whose income may only be a few euro cents above or below the set thresholds. Therefore, any rigid threshold, such as the threshold of 60% provided for in the proposal for a Directive, may not achieve the objective pursued and, furthermore, may trigger a lot of negative behaviour among members of the public and may lead to a shift from employment to the shadow economy or to the concealment of income.
- 3.9.5 The EESC also points out that social support for people with low incomes varies considerably from one Member State to another and that a lot of it is not taxable and is therefore not regarded as income by the tax authorities.
- 3.10 On top of precarities linked to housing (6.9% of households in the EU-27 are not able to heat their homes adequately, ranging from 30.1% in Bulgaria to 1.8% in Finland, which demonstrates the extent to which energy precarity varies), there is also precarity linked to mobility and transport. Petrol prices influence the mobility behaviour of households, in particular those that live in areas without public transport and those whose cars are old and who cannot change them. This then leads to new forms of energy precarity linked to mobility and transport.
- 3.11 The EESC emphasises in this regard that financial difficulties arising from energy costs are currently under the spotlight in many Member States, with negative effects both for the most vulnerable families and for business. The EESC believes that significant contributions to resolving these problems can be made by substantially increasing investment in renewable energies and by reforming the European price formation system to ensure that it reflects the price of all forms of energy, including the cheapest ones. This requires a change in the auctioning system for wholesale electricity markets under European internal electricity market rules.
- 3.12 The EESC also warns of the risk of negative effects on the competitiveness of European industry and notes that the Commission proposes enabling Member States to grant tax reductions on consumption for energy products used for heating in favour of energy-intensive business or where agreements are concluded with business entities or associations to improve energy efficiency. This possibility is essential to preserve competitiveness of EU industry given that most economies outside EU have so far failed to adopt tangible climate measures.
- 3.13 The EESC also regrets that the Commission proposal has in principle removed the possibility to differentiate the minimum taxation rates between business and consumers.
- 3.14 The EESC takes note of the possibility to reduce taxes for certain modes but regrets that no opening is offered with respect to road transport, except for transport in trolley buses.



- 3.15 In general, the EESC finds the reduction possibilities granted for the transport of goods and passengers inadequate, since they exclude road transport and do not respect the principle of technical neutrality, for instance by designing trolley buses as the only road vehicle that can be subject to tax reduction.
- 3.15.1 The EESC would have preferred a general exemption or reduction for goods transport and for enterprises with significant export business to third countries.
- 3.15.2 The EESC highlights in this context that the Commission proposal aims to harmonise taxation levels of diesel and petrol. This means a cost increase for goods transport, which could be compensated for through a general reduction in taxes on fuels used in goods transport. The same reasoning applies to the disappearance of the distinction between commercial and non-commercial diesel.
- 3.16 The EESC also points out that the dedicated tax reduction possibilities provided for in Articles 8(2) and 18 regarding certain types of equipment and energy-intensive industries are extremely selective and could, given their discretionary nature, cause the same kind of tax competition that the Commission proposal seeks to eliminate. It is difficult to understand why a simple straightforward solution was not preferred, in the form of reduced tax levels for business actors. This is particularly relevant with respect to "mineralogical processes" which, as such, can be covered by the reduction options under Article 18, but at the discretion of the Member State concerned, which causes legal uncertainty and tax competition.
- 3.17 Regarding the added value of extending taxation to aviation and waterborne transport inside the EU, the EESC underlines the importance of equally concentrating other productive ways to promote improved sustainability in these modes. With respect to aviation, new and sustainable means of propulsion are being developed, and dedicated means to promote those should be focused on. With respect to waterborne transport, this is one of the sectors where decarbonisation appears to be extremely difficult. Hence there is a risk that making such transport subject to taxation will only lead to higher costs, as is also likely to be the case with the extension of ETS to that field. In both contexts, the ten-year transition period for overall phasing-in of taxation with respect to aviation and of dedicated tax regimes for sustainable biofuels and other alternative fuels appears extremely short.
- 3.18 The EESC considers that the provisions on maritime transport and aviation do not take sufficient account of the situation of island countries, countries with extensive archipelagos and countries with long distances and sparsely populated regions.
- 3.19 The EESC also notes that it has been left to Member States to decide whether they want to make extra EU air navigation and waterborne navigation subject to the same levels of taxation as apply inside the EU or to make them exempt from such operations. The EESC is highly critical of this provision, as it may encourage Member States to go it alone regarding the taxation of modes whereas it is primarily worldwide solutions that should be promoted and whereas unilateral action may cause serious complications.

- 3.20 Lastly, the EESC wonders how effective green taxation will be. Green taxation instruments concern the energy, transport, pollution and natural resource sectors. Although many of them have been developed within the European framework and are therefore common to all EU countries, their application differs from country to country, even though it is supposed to be regulated.
- 3.21 The different forms of redistributing tax revenues can work against taxpayers' acceptance of green taxation: the reduction of the public deficit, the redistribution of revenues to businesses or households, the reduction of other taxes such as those on labour income or the redistribution of revenues to environmental policies or investments. As demonstrated by the "yellow vests" crisis in France, these four forms of redistributing revenues are not enough to ensure acceptance of price increases on taxed products.
- 3.22 In summary, the EESC takes the view that the social acceptability of environmental taxation cannot neglect compensation to take account of the revenues of households and their energy precarity, in its structural dimension (absence of public transport, insulation of housing, efficiency of the heating system, type of vehicle owned).
- 3.23 Environmental taxation is often considered unjust since it hits modest households hardest, and now increasingly the middle classes as well. Low-income households that spend a larger share of their income on petrol and transport will be hit disproportionately hard. They are also less able to carry out an ecological transition: while the operating costs of low-carbon products (electric vehicles, solar cells etc.) may be lower, a high initial investment is required, which is an obstacle for households with limited access to capital. Furthermore, households in a precarious situation are obliged to plan their spending from a short-term perspective, which does not allow them to benefit from possible long-term savings.
- 3.24 To be socially acceptable, environmental taxation must be complemented by corrective measures, but no such measures appear either in the proposal for a Directive or in the Social Climate Fund.

Brussels, 20 January 2022

Christa Schweng

The president of the European Economic and Social Committee