



# Procedure file

Basic information		
CNS - Consultation procedure Directive	<a href="#">2011/0092(CNS)</a>	Procedure lapsed or withdrawn
Taxation of energy products and electricity: restructuring the Community framework		
Subject		
2.70.02 Indirect taxation, VAT, excise duties		
3.60.01 Solid fuels, coal mining, mining industry		
3.60.02 Oil industry, motor fuels		
3.60.03 Gas, electricity, natural gas, biogas		
3.60.05 Alternative and renewable energies		
3.60.08 Energy efficiency		
3.70.02 Atmospheric pollution, motor vehicle pollution		
3.70.03 Climate policy, climate change, ozone layer		
3.70.15 Environmental taxation		

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	<b>ECON</b> Economic and Monetary Affairs		10/05/2011
		PPE <a href="#">LULLING Astrid</a>	
		Shadow rapporteur	
		S&D <a href="#">LUDVIGSSON Olle</a>	
		ALDE <a href="#">DE BACKER Philippe</a>	
		Verts/ALE <a href="#">LAMBERTS Philippe</a>	
		ECR <a href="#">STREJČEK Ivo</a>	
	Committee for opinion	Rapporteur for opinion	Appointed
	<b>BUDG</b> Budgets		05/05/2011
		NI <a href="#">WERTHMANN Angelika</a>	
	<b>ENVI</b> Environment, Public Health and Food Safety		15/06/2011
		S&D <a href="#">VAN BREMPT Kathleen</a>	
	<b>ITRE</b> Industry, Research and Energy		15/06/2011
	NI <a href="#">KOVÁCS Béla</a>		
<b>TRAN</b> Transport and Tourism		23/05/2011	
	S&D <a href="#">SIMPSON Brian</a>		
<b>AGRI</b> Agriculture and Rural Development		24/05/2011	
	S&D <a href="#">GUTIÉRREZ PRIETO Sergio</a>		
Council of the European Union	Council configuration	Meeting	Date

European Commission	<a href="#">Economic and Financial Affairs ECOFIN</a>	<a href="#">3324</a>	20/06/2014
	<a href="#">Economic and Financial Affairs ECOFIN</a>	<a href="#">3248</a>	21/06/2013
	<a href="#">Economic and Financial Affairs ECOFIN</a>	<a href="#">3205</a>	04/12/2012
	<a href="#">Economic and Financial Affairs ECOFIN</a>	<a href="#">3178</a>	22/06/2012
	Commission DG <a href="#">Taxation and Customs Union</a>	Commissioner ŠEMETA Algirdas	

## Key events

13/04/2011	Legislative proposal published	<a href="#">COM(2011)0169</a>	Summary
10/05/2011	Committee referral announced in Parliament		
29/02/2012	Vote in committee		
08/03/2012	Committee report tabled for plenary, 1st reading/single reading	<a href="#">A7-0052/2012</a>	Summary
18/04/2012	Debate in Parliament		
19/04/2012	Results of vote in Parliament		
19/04/2012	Decision by Parliament	<a href="#">T7-0136/2012</a>	Summary
22/06/2012	Debate in Council	<a href="#">3178</a>	Summary
04/12/2012	Debate in Council	<a href="#">3205</a>	Summary
21/06/2013	Debate in Council	<a href="#">3248</a>	
20/06/2014	Debate in Council	<a href="#">3324</a>	
07/03/2015	Proposal withdrawn by Commission		

## Technical information

Procedure reference	2011/0092(CNS)
Procedure type	CNS - Consultation procedure
Procedure subtype	Legislation
Legislative instrument	Directive
Legal basis	Treaty on the Functioning of the EU TFEU 113
Stage reached in procedure	Procedure lapsed or withdrawn
Committee dossier	ECON/7/05849

## Documentation gateway

Legislative proposal	<a href="#">COM(2011)0169</a>	13/04/2011	EC	Summary
Document attached to the procedure	<a href="#">COM(2011)0168</a>	13/04/2011	EC	Summary
Document attached to the procedure	SEC(2011)0409	13/04/2011	EC	
Document attached to the procedure	<a href="#">SEC(2011)0410</a>	13/04/2011	EC	
Committee draft report	<a href="#">PE473.839</a>	13/10/2011	EP	

Committee opinion	<b>BUDG</b>	<a href="#">PE469.857</a>	24/11/2011	EP	
Amendments tabled in committee		<a href="#">PE475.931</a>	01/12/2011	EP	
Committee opinion	<b>TRAN</b>	<a href="#">PE472.088</a>	02/12/2011	EP	
Committee opinion	<b>AGRI</b>	<a href="#">PE469.986</a>	20/12/2011	EP	
Committee opinion	<b>ENVI</b>	<a href="#">PE472.296</a>	07/02/2012	EP	
Committee opinion	<b>ITRE</b>	<a href="#">PE473.711</a>	07/02/2012	EP	
Committee report tabled for plenary, 1st reading/single reading		<a href="#">A7-0052/2012</a>	08/03/2012	EP	Summary
Text adopted by Parliament, 1st reading/single reading		<a href="#">T7-0136/2012</a>	19/04/2012	EP	Summary
Commission response to text adopted in plenary		<a href="#">SP(2012)388</a>	30/05/2012	EC	

<a href="#">Additional information</a>	
National parliaments	<a href="#">IPEX</a>
European Commission	<a href="#">EUR-Lex</a>

## Taxation of energy products and electricity: restructuring the Community framework

**PURPOSE:** to review obsolete rules on the taxation of energy in the European Union (EU) with a view to ensuring the proper functioning of the internal market in a context where Member States need to contribute to the fulfilment of the EU objectives in the field of energy and climate change.

**PROPOSED ACT:** Council Directive.

**BACKGROUND:** since the time the ETD was adopted, the underlying policy framework changed radically. In the areas of energy and climate change, concrete and ambitious policy objectives have been defined for the period until 2020. The ETD in its present version raises notably the following problems:

- (1) It does not ensure the desirable degree of consistency in the treatment of the basic fossil energy sources and electricity. Taking into account the energy content of the various products, minimum levels of taxation vary substantially according to the product concerned. Hence, some products are favoured over others, the most favourable treatment being reserved to coal. This also implies that certain businesses can be better off compared to others, depending on the energy source they use.
- (2) The price signal the Energy Taxation Directive introduces via its minimum levels of taxation is not properly related to the need to combat climate change. The terms of the Directive are not well adapted to ensure the proper functioning of the internal market in circumstances where Member States resort to CO<sub>2</sub>-related taxation in order to reduce CO<sub>2</sub> emissions.
- (3) In spite of the growing market relevance of renewable fuels, their tax treatment under the ETD still relies on rules developed at a time when these fuels were niche alternatives without major market significance. Standard taxation of renewable fuels is based on volume and on the rate applicable to the fossil product replaced by the renewable product concerned. The lower energy content of renewable fuels is not taken into account, and thus the same tax rate leads to a comparatively higher burden compared to the competing fossil fuels.
- (4) Taxes on energy are levied under the Energy Taxation Directive in the same way whether or not, in a particular case, the limitation of CO<sub>2</sub> emissions is ensured through the EU ETS. As a result, mechanisms of Union law intended to limit such emissions may overlap in certain cases and may be completely missing in others.

For a proper framework to be available for the use of energy taxation in this new environment, the March 2008 European Council requested to bring the Directive more closely into line with the EU's energy and climate change objectives. The present proposal, therefore, aims at the following objectives:

- ensure consistent treatment of energy sources within the ETD in order to provide a genuine level playing field between energy consumers independent from the energy source used;
- provide an adapted framework for the taxation of renewable energies;
- provide a framework for the use of CO<sub>2</sub> taxation to complement the carbon price signal established by the ETS while avoiding overlaps between the two instruments.

**IMPACT ASSESSMENT:** in order to examine how the different policy objectives could best be addressed, a number of approaches were examined and compared to the baseline scenario (business as usual).

- Revision of the existing tax treatment of the various energy sources according to a single criterion.
- Revision of the structure of the Directive taking into account the different objectives behind energy taxes (revenue generation and energy savings on the one hand, environmental considerations on the other).

- Introduction of an additional uniform CO2-related tax.

The impact assessment showed that the objectives set out above can be achieved without economic costs and that the revision can potentially bring economic benefits, in particular if additional revenue from general energy consumption taxation or CO2-related taxation would be used to reduce the employers' social security contributions. It also showed that the ETD revision would not create an undue burden on businesses and would not lead to competitiveness losses at sectoral level. It also emerges from the impact assessment that the distributional impacts on households differ from one Member State to another, more than any other single impact and thus the continuation of the possibility to exempt households from taxation at national level seems justified.

LEGAL BASIS: Article 113 of the Treaty on the Functioning of the European Union (TFEU).

CONTENT: the Commission proposes with effect from 2013:

1. To introduce an explicit distinction between energy taxation specifically linked to CO2-emissions attributable to the consumption of the products concerned (CO2-related taxation) and energy taxation based on the energy content of the products (general energy consumption taxation).
2. To extend the scope of the Energy Taxation Directive ? when it comes to CO2-related taxation ? to energy products in principle falling within the scope of Directive 2003/87/EC and at the same time to provide for an obligatory exemption from CO2-related taxation in cases subject to the Community scheme under that Directive.
3. To revise the minimum levels of taxation, ensuring in particular that they reflect CO2 emissions and net calorific value in a consistent manner for the various energy sources, providing for transitional periods where necessary.
4. To require that, when Member States set national levels of taxation, they replicate the relationship between the minimum levels of taxation fixed in the ETD for the various energy sources. This requirement is meant to ensure that consistent treatment of energy sources extends to the levels of taxation fixed nationally (above the minimum levels set in the ETD).
5. To abolish the possibility for Member States to differentiate between the tax treatment of commercial and non-commercial use of gas oil as motor fuel.
6. To simplify the structure of the minimum tax levels where possible.
7. To limit the exemption of the ETD for energy products used to produce electricity to general energy consumption taxation and to add an exemption from taxation, for a limited time period of eight years, electricity produced on shore and directly provided to vessels while at berth in a port.
8. To provide for a tax credit concerning CO2-related taxation for installations belonging to sectors or sub-sectors deemed to be exposed to a significant risk of carbon leakage.
9. To maintain the flexibility left by the Energy Taxation Directive, in particular the existing rule that Member States are free to apply more than only one tax on energy consumption. Nevertheless, the Commission proposes to revise some of the existing options. More precisely, the Commission proposes the following:
  - to limit the scope of the provision concerning instances to which the Directive does not apply, to general energy consumption taxation, in order to establish a comprehensive and consistent CO2 price signal outside the EU emission trading scheme;
  - to abolish the provision which provides for lower minimum levels of taxation for gas oil used for heating purposes in three Member States. This provision adds to the inconsistencies in the way various energy consumers are treated on the internal market;
  - to limit as much as possible the optional reductions and exemptions to general energy consumption taxation in order to establish a comprehensive and consistent CO2 price signal outside the EU emission trading scheme;
  - to permit tax advantages for heating use by households independently from the energy source used, i.e. to remove the exclusion of certain sources such as heating oil;
  - to amend the provision which allows Member States to apply a level of taxation down to zero to energy products and electricity used in agricultural, horticultural or piscicultural works, and in forestry;
  - to remove the option for Member States to provide for an exemption or tax reduction for biofuels by 2023.

Every five years and for the first time by the end of 2015, the Commission shall submit to the Council a report on the application of this Directive and, where appropriate, a proposal for its modification.

BUDGETARY IMPLICATION: the proposal has no implication on the EU budget.

DELEGATED ACTS: the proposal contains provisions empowering the Commission to adopt delegated acts in accordance with Article 290 of the Treaty on the Functioning of the European Union, in order to update the codes of the Combined Nomenclature for the products referred to in Directive 2003/96/EC, as well as the reference to the applicable Combined Nomenclature.

## Taxation of energy products and electricity: restructuring the Community framework

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This Commission communication accompanies the proposal for a Council Directive amending Directive 2003/96/EC restructuring the Community framework for the taxation of energy products and electricity (ETD).

The document recalls that energy consumption is responsible for the majority of greenhouse gas emission, representing 79% of total gas emissions. As part of the [Europe 2020 strategy](#), Member States are committed to setting national targets for energy efficiency implying substantial energy savings. Energy taxation as a key driver towards the Europe 2020 goals.

Need to act: according to the Commission, revising the ETD is imperative so as to make it more consistent with other EU policies for several reasons:

Energy policy: the ETD provides no incentive or even price signal to promote alternative energies and encourage consumers to save energy. With taxation based on volume, ethanol is effectively the most heavily taxed energy product today. The same goes for energy sources used for

heating, where coal is currently the least taxed energy source.

Environment: sectors outside the EU ETS such as transport, small industrial installations, agriculture and households account for half of the CO<sub>2</sub> emissions. Here, a potential lack of coordination between the ETD and the EU ETS may give rise to a double burden or, conversely, to the possibility of evading the responsibility for emissions.

Single market: Member States are beginning to implement a variety of different approaches to environmental taxation, which may lead to distortions and double taxation within the single market.

Revision of the ETD: in this context and in line with the March 2008 European Council's request, the Commission is presenting its proposal for a revision of Directive 2003/96/EC restructuring the Community framework for the taxation of energy products and electricity "the ETD") to allow Member States to make the best use of an existing instrument in the new policy framework. More rational and targeted energy taxation will contribute in a technology-neutral manner to cleaner and more efficient consumption of energy, therefore supporting sustainable growth. In a nutshell, the proposal for the ETD revision:

- rebalances the charge between different fuels, including renewable energies, in an objective manner (based on energy content and on CO<sub>2</sub> emissions);
- provides for a framework for CO<sub>2</sub> taxation in the internal market and in that way puts a price on CO<sub>2</sub> emissions which are not covered by the EU Emission Trading System.

To this end, the Commission proposes to split the minimum rate of taxation of energy products into two parts:

- CO<sub>2</sub>-related taxation, based on the CO<sub>2</sub> emissions of the energy product, fixed at a level of 20 euro per tonne CO<sub>2</sub>;
- General energy consumption taxation, based on energy content measured in GJ, regardless of the energy product, thus providing an incentive to save energy. The tax will reflect the actual energy that a product generates and energy efficient consumption would automatically be rewarded. For motor fuels, the minimum level of taxation is fixed at 9.6 euro per Gigajoule, which corresponds to the current minimum rate applicable for petrol minus the corresponding CO<sub>2</sub> part of the minima. For heating fuels, the current minimum level for electricity of 0.15 euro per Gigajoule (corresponding to approximately 0.5 euro per MWh) is applied to all the energy products used for heating, taking into account the energy content of the respective product. The scope of energy taxation remains unchanged and comprises heating use and motor fuel use and consumption of electricity in similar situations.

The proposal to revise the ETD removes counter-productive subsidies and inconsistencies that at present exist in energy taxation. It reduces the tax burden on renewable energies and rebalances the charge between different fossil fuels in an objective manner (in basing it on energy content and CO<sub>2</sub> emissions). In consequence, sources of energy rich in CO<sub>2</sub> or with high energy content will be taxed more per physical volume unit. This will encourage the consumption of energy sources emitting less CO<sub>2</sub> and reward more energy efficiency, in line with and supporting EU climate and energy policies.

In relation to competitors outside the EU, in order to avoid that CO<sub>2</sub>-related taxation makes our companies leave Europe while emissions globally remain unchanged or increase ("carbon leakage"), the proposal introduces an approach similar to the free allocation of allowances under the EU ETS for sectors that are deemed to be at a significant risk of carbon leakage. Small industrial installations subject to the CO<sub>2</sub>-related taxation will be granted a lump sum tax credit calculated on the basis of a fuel benchmark.

Particular situations will continue to be given appropriate treatment:

- acknowledging that differences in taxation of domestic heating are less relevant for the proper functioning of the internal market and that heating costs might be an important issue in the domestic social conditions of some Member State, the Commission proposes to maintain the possibility for Member States to apply tax exemptions or reductions for energy products and electricity and to extend it to all heating fuels;
- CO<sub>2</sub>-intensive energy sources (such as coal) will be subject to a higher charge under the revised system. The change will ensure that all energy consumers, not only those included in the EU emission trading system, face an incentive to shift towards cleaner energy sources;
- diesel will gradually face higher minimum levels of taxation per litre compared to petrol as a mere consequence of the fact that diesel has a higher energy content and also generates more CO<sub>2</sub> emissions per litre than petrol. The gradual phasing-in of the new tax treatment for diesel will also provide for an adaptation period for the commercial transport sector;
- lower minimum rates apply to motor fuel used in agriculture, aquaculture and horticulture and this will remain the case with the ETD revision. The ETD revision will affect the current possibility for Member States to fully exempt from taxation motor fuels and heating fuels as well as electricity consumed in these sectors.

The precise impacts of the ETD revision will to a large degree depend on pre-existing national rates and on the choices made by Member States in accordance with the subsidiarity principle, in particular on the balance between the CO<sub>2</sub> and the energy component of the tax and the tax rates applied. The impacts of the proposal would also depend on the extent to which Member States decide to avail themselves of the transitional periods and options contained in the proposal.

Advantages: the revision of the ETD as proposed by the Commission will:

- restructure the current energy tax system in order to make it more efficient and consistent;
- improve the functioning of the Internal Market, creating a level playing field for businesses which will be treated on equal footing, whether they consume oil, natural gas, coal or biomass;
- have considerable positive environmental steering effects and thus contribute to realising the objectives of the Europe 2020 strategy;
- help, in the longer run, Member States to implement more ambitious policies on national level - due to both the need to fulfil environmental objectives as well as fiscal needs - which is why the proposal has the potential to provide efficiency gains that go largely beyond the impacts/gains at the time of the implementation;
- provide legal certainty for their structural reforms of their fiscal policies and tax systems under way in the exit from the economic and financial crisis.

## Taxation of energy products and electricity: restructuring the Community framework

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The Committee on Economic and Monetary Affairs, in the context of a special legislative procedure (consultation of Parliament), adopted the report by Astrid LULLING (EPP, LU) on the proposal for a Council Directive amending Directive 2003/96/EC restructuring the Community framework for the taxation of energy products and electricity. The committee amended the proposal as follows:

**Optimal functioning of the internal market:** Members stress the need to ensure that the internal market functions in an optimum manner in a context of new requirements relating to the limitation of climate change, to the use of renewable energy sources and to energy savings. They recommend that the consistent treatment of energy sources under this Directive should therefore be guaranteed in order to provide a genuine level playing field for energy consumers regardless of the energy source used.

The report also stipulates that the taxation of energy products should be approached in a technologically neutral manner in order to give new technologies the opportunity to develop.

**Energy recovery from waste:** Members consider that energy taxation should not cover energy recovery from waste and, in particular, the use of waste as an alternative fuel, given that Directive 2008/98/EC on waste urges producers and holders of waste to dispose of waste in the most energy-efficient and resource-friendly manner possible and gives priority to energy recovery over disposal.

Member States should also retain the right to apply a level of general energy consumption taxation down to zero on the consumption of energy products and electricity used for agricultural, horticultural, and piscicultural works, and in forestry.

**Installations subject to the emission trading scheme:** CO<sub>2</sub>-related taxation must not apply to direct and indirect consumption in installations subject to the Union scheme. A double burden in the form of double taxation and double regulation would lead to distortions of competition and must be ruled out. Any restructuring of energy taxation should ensure that sectors not subject to the emissions trading scheme are not penalised in relation to sectors that are covered by that scheme.

**Transparency of rules:** given the complex nature of the requirements which the two components of the new system, namely energy taxation and CO<sub>2</sub>-related taxation, are intended to meet, clear rules, which, in the interests of all consumers, are transparent and readily understandable, should be laid down at all levels in order to guarantee that the system can be properly administered.

**Increase in the tax rate of diesel compared with petrol:** implementing the new tax structure will involve increasing the rate of taxation of diesel to bring it into line with that for petrol. Members consider that this may call into question both the decision taken by the Union automobile industry to focus on clean, energy-efficient conventional combustion engines and the achievement of the Union's CO<sub>2</sub> emissions reduction targets, since the CO<sub>2</sub> limit values set can be achieved only if a sufficient number of vehicles on the road are diesel powered. Appropriate flexible measures should be taken in order to ensure that the competitiveness of the automobile sector and the success of the CO<sub>2</sub> emissions reduction strategy in that sector are not endangered. Sales taxes, registration taxes and annual road use taxes should be harmonised and, as a matter of principle, set solely on the basis of a vehicle's CO<sub>2</sub> emissions.

In order to make it possible for transport firms to adapt to the new rules, a transitional period ending in 2025 should be instituted.

**Oil-derived motor fuel:** the amended text underlines that the possibility to apply a lower level of taxation to oil-derived motor fuel used by taxis is no longer compatible with the objective of policies promoting alternative fuels and energy carriers and the use of cleaner vehicles in urban transport and should thus be removed.

**Electric vehicles:** since the introduction of electric and hybrid vehicles is key to easing dependence on non-renewable fuels in the transport sector, Member States should, for a limited period of time, have the possibility of applying an exemption or reduction in the level of taxation to electricity utilised to charge such vehicles.

**Exemptions or reductions to the benefit of households and charitable organisations:** the report underlines that these reductions prevent a correct price signal from being given, thereby taking away an important incentive to reduce energy bills and energy use. The possibility in Directive 2003/96/EC to apply such exemptions or reductions should therefore, after a long phase-out period, be removed.

In Member States where this affects energy prices, low-income households and charitable organisations should be compensated via solid and comprehensive social measures.

**Liquefied petroleum gas and natural gas used as propellants:** according to Members, advantages in the form of lower minimum levels of general energy consumption taxation or the possibility to exempt those energy products from taxation are not justified in the long run and should therefore be removed, in particular in the light of the need to enable renewable fuels to increase their market share. However, since LPG and natural gas have a less harmful environmental impact than other fossil fuels and since their distribution infrastructure could be beneficial in the introduction of renewable alternatives, the advantages should be phased out step by step.

**Air and maritime navigation:** Directive 2003/96/EC obliges Member States to exempt from taxation fuel used for non-pleasure air and maritime navigation. Members consider that such exemptions are not in line with the aim of creating a level playing field among the various modes of transport. They should therefore be phased out.

In the absence of progress at an international level, the Commission should put forward legislative proposals to reduce CO<sub>2</sub> emissions in both sectors, taking into account the risk of carbon leakage and the competitiveness of the sectors. Such tax treatment should also be applicable to inland waterways.

**Carbon capture and storage capacities:** as regards CO<sub>2</sub> related taxation, the treatment of the sectors concerned should take into account the specific carbon capture and storage capacities and the risk of carbon leakage for each of the sectors and sub-sectors concerned, as well as the possible impact on their productivity and viability. The sectors producing biomass with high carbon sequestration potential should be exempted.

**Fuels that are biomass or made of biomass:** the general rules introduced by this Directive take account of the specificities of fuels that are biomass or made of biomass complying with the sustainability criteria laid down in Article 17 of Directive 2009/28/EC with regard both to their contribution to the CO<sub>2</sub>-balance and to their lower energy content per quantitative unit, as compared to some of the competing fossil fuels. Members call for, in accordance with the provisions of Directive 2009/28/EC, these sustainability criteria should be made more restrictive in 2017 and 2018.

In order to fulfil the criteria, the greenhouse gas emission saving will from 1 January 2017 have to be at least 50 %. From 1 January 2018 the saving will have to be at least 60 % for products made in installations in which production started on or after 1 January 2017.

Report: Members want the Commission to report to the Parliament and the Council on the application of this Directive every three years and for the first time by the end of 2015.

In particular, the Commissions report should examine:

- minimum levels of general energy consumption taxation in order to ensure that they preserve their intended effects,
- the minimum level of CO<sub>2</sub>-related taxation in the light of the evolution of the market price in the EU of the emission allowances,
- the impact on the setting of industrial policy priorities in the European car industry,
- the impact of innovation and technological developments, the impact on harmful or potentially harmful emissions other than CO<sub>2</sub>,
- the justification for the tax exemptions and reductions laid down in the Directive, including for fuel used for the purpose of air and maritime navigation, as well as
- developments in the use of biogas, natural gas and LPG in road transport.

The report shall also include an overview of existing taxation provisions contained in bilateral air service agreements. The report shall take into account the proper functioning of the internal market, the real value of the minimum levels of taxation and the wider objectives of the TFEU.

## Taxation of energy products and electricity: restructuring the Community framework

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The European Parliament adopted by 374 votes to 217, with 73 abstentions, in the context of a special legislative procedure (consultation of Parliament), a legislative resolution on the proposal for a Council Directive amending Directive 2003/96/EC restructuring the Community framework for the taxation of energy products and electricity.

Parliament recommends amending the proposal as follows:

**Optimal functioning of the internal market:** Parliament stresses the need to ensure that the internal market functions in an optimum manner in a context of new requirements relating to the limitation of climate change, to the use of renewable energy sources and to energy savings. It recommends that the consistent treatment of energy sources under this Directive should therefore be guaranteed in order to provide a genuine level playing field for energy consumers regardless of the energy source used.

The resolution also stipulates that the taxation of energy products should be approached in a technologically neutral manner in order to give new technologies the opportunity to develop.

**Energy recovery from waste:** Parliament considers that energy taxation should not cover energy recovery from waste and, in particular, the use of waste as an alternative fuel, given that Directive 2008/98/EC on waste urges producers and holders of waste to dispose of waste in the most energy-efficient and resource-friendly manner possible and gives priority to energy recovery over disposal.

Member States should also retain the right to apply a level of general energy consumption taxation down to zero on the consumption of energy products and electricity used for agricultural, horticultural, and piscicultural works, and in forestry.

**Installations subject to the emission trading scheme:** CO<sub>2</sub>-related taxation must not apply to direct and indirect consumption in installations subject to the Union scheme. A double burden in the form of double taxation and double regulation would lead to distortions of competition and must be ruled out. Any restructuring of energy taxation should ensure that sectors not subject to the emissions trading scheme are not penalised in relation to sectors that are covered by that scheme.

**Transparency of rules:** given the complex nature of the requirements which the two components of the new system, namely energy taxation and CO<sub>2</sub>-related taxation, are intended to meet, clear rules, which, in the interests of all consumers, are transparent and readily understandable, should be laid down at all levels in order to guarantee that the system can be properly administered.

**Favourable minimum level of taxation applicable to gas oil:** the European Parliament deleted a recital providing for the need to align and gradually move to a situation where gas oil and petrol are taxed at an equal level.

Member States may differentiate between commercial and non-commercial gas oil. 'Commercial gas oil used as propellant' means gas oil used as propellant for the following purposes: (i) the carriage of goods for hire or reward, or on own account, by motor vehicles or articulated vehicle combinations intended exclusively for the carriage of goods by road; (ii) the carriage of passengers, whether by regular or occasional service, by a motor vehicle.

Member States shall lay down the option for commercial transporters to apply a different tax account system.

**Increase in the tax rate of diesel compared with petrol:** implementing the new tax structure will involve increasing the rate of taxation of diesel to bring it into line with that for petrol. Parliament considers that this may call into question both the decision taken by the Union automobile industry to focus on clean, energy-efficient conventional combustion engines and the achievement of the Union's CO<sub>2</sub> emissions reduction targets, since the CO<sub>2</sub> limit values set can be achieved only if a sufficient number of vehicles on the road are diesel powered. Appropriate flexible measures should be taken in order to ensure that the competitiveness of the automobile sector and the success of the CO<sub>2</sub> emissions reduction strategy in that sector are not endangered. Sales taxes, registration taxes and annual road use taxes should be harmonised and, as a matter of principle, set solely on the basis of a vehicle's CO<sub>2</sub> emissions.

**Natural gas and biomethane:** in the case of natural gas and biomethane used as motor fuel, higher minimum levels of general energy consumption taxation shall apply only after an assessment, to be carried out by the Commission by 2023, of the implementation of the provisions of this Directive relating to the level of taxation applicable to natural gas in road transport.

**Oil-derived motor fuel:** the amended text underlines that the possibility to apply a lower level of taxation to oil-derived motor fuel used by taxis is no longer compatible with the objective of policies promoting alternative fuels and energy carriers and the use of cleaner vehicles in urban transport and should thus be removed.

**Electric vehicles:** since the introduction of electric and hybrid vehicles is key to easing dependence on non-renewable fuels in the transport sector, Member States should, for a limited period of time, have the possibility of applying an exemption or reduction in the level of taxation to electricity utilised to charge such vehicles.

**Exemptions or reductions to the benefit of households and charitable organisations:** the resolution underlines that these reductions prevent a

correct price signal from being given, thereby taking away an important incentive to reduce energy bills and energy use. The possibility in Directive 2003/96/EC to apply such exemptions or reductions should therefore, after a long phase-out period, be removed.

In Member States where this affects energy prices, low-income households and charitable organisations should be compensated via solid and comprehensive social measures.

Liquefied petroleum gas and natural gas used as propellants: according to Members, advantages in the form of lower minimum levels of general energy consumption taxation or the possibility to exempt those energy products from taxation are not justified in the long run and should therefore be removed, in particular in the light of the need to enable renewable fuels to increase their market share. However, since LPG and natural gas have a less harmful environmental impact than other fossil fuels and since their distribution infrastructure could be beneficial in the introduction of renewable alternatives, the advantages should be phased out step by step.

Carbon capture and storage capacities: as regards CO<sub>2</sub> related taxation, the treatment of the sectors concerned should take into account the specific carbon capture and storage capacities and the risk of carbon leakage for each of the sectors and sub-sectors concerned, as well as the possible impact on their productivity and viability. The sectors producing biomass with high carbon sequestration potential should be exempted.

Fuels that are biomass or made of biomass: the general rules introduced by this Directive take account of the specificities of fuels that are biomass or made of biomass complying with the sustainability criteria laid down in Article 17 of Directive 2009/28/EC with regard both to their contribution to the CO<sub>2</sub>-balance and to their lower energy content per quantitative unit, as compared to some of the competing fossil fuels. Members call for, in accordance with the provisions of Directive 2009/28/EC, these sustainability criteria should be made more restrictive in 2017 and 2018.

In order to fulfil the criteria, the greenhouse gas emission saving will from 1 January 2017 have to be at least 50 %. From 1 January 2018 the saving will have to be at least 60 % for products made in installations in which production started on or after 1 January 2017.

Guidelines: Member States shall provide comprehensive guidance to beneficiaries, including to small and medium-sized farms, concerning the application of energy efficiency requirements associated with reduced tax rates.

Report: Parliament wants the Commission to report to the Parliament and the Council on the application of this Directive every three years and for the first time by the end of 2015.

In particular, the Commissions report should examine:

- minimum levels of general energy consumption taxation in order to ensure that they preserve their intended effects,
- the minimum level of CO<sub>2</sub>-related taxation in the light of the evolution of the market price in the EU of the emission allowances,
- the impact on the setting of industrial policy priorities in the European car industry,
- the impact of innovation and technological developments, the impact on harmful or potentially harmful emissions other than CO<sub>2</sub>,
- the justification for the tax exemptions and reductions laid down in the Directive, including for fuel used for the purpose of air and maritime navigation, as well as
- developments in the use of biogas, natural gas and LPG in road transport.

The report shall also include an overview of existing taxation provisions contained in bilateral air service agreements. The report shall take into account the proper functioning of the internal market, the real value of the minimum levels of taxation and the wider objectives of the TFEU.

## Taxation of energy products and electricity: restructuring the Community framework

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The Council discussed a proposed directive on the taxation of energy products and electricity aimed at restructuring directive 2003/96/EC on energy taxation in order to align it more closely with EU energy and climate change objectives.

The presidency concluded that there was agreement amongst Member States that minimum tax levels should be laid down in the directive, taking as their reference points the energy content and CO<sub>2</sub> emission levels of energy products.

However, Member States should retain maximum flexibility to determine the structure of their national energy taxes, and that provisions on the principle of proportionality might have to be deleted.

Based on article 113 of the Treaty on the Functioning of the European Union, the directive would require unanimity in the Council for its adoption, following consultation of the European Parliament (special legislative procedure).

## Taxation of energy products and electricity: restructuring the Community framework

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The Council endorsed a report reflecting the state of play of negotiations and setting out proposals for future work regarding a Directive amending the existing energy taxation directive to bring it more closely in line with the EU's energy and climate change objectives.

The Cypriot Presidency has presented four compromise proposals, the latest on 12 November 2012. The Presidency's compromise proposals have, inter alia, been based on the following principles as a starting point for further discussions:

- the levels of taxation which Member States shall apply to energy products and electricity may not be less than the minimum levels of taxation laid down in the Directive;
- the single minimum levels of taxation were established on the basis of two reference components, an energy related component and a CO<sub>2</sub>-related component;
- Member States may express their national levels of taxation as one single tax or as separate taxes as well as in units other than those used to express the minimum levels of taxation, provided that the minimum levels laid down in the Directive are respected.

Even though most Member States support, in principle, this structure of the taxation, additional discussions on the minimum levels and a number of technical issues are necessary to achieve further progress on the compromise text. The report notes that, in order to achieve further



progress towards a final compromise, further work is needed, in particular in the following areas:

- levels of the minimum rates of taxation of the energy products and electricity;
- taxation of installations falling within the EU Emission Trading Scheme (ETS);
- tax treatment of biofuels and bioliquids;
- tax treatment of commercial gasoil;
- tax treatment of energy products and electricity used for agriculture;
- transitional periods;
- tax reliefs below the minimum levels.

The Council invited the incoming Irish Presidency to continue work, taking as a starting point the latest compromise text.