Taxation of energy products and electricity: restructuring the Community framework

2011/0092(CNS) - 13/04/2011 - Legislative proposal

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 CO2-related taxation in order to reduce CO2 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 CO2 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 CO2 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.