EURACOAL
European Association
for Coal and Lignite
AISBL

EURACOAL response to the Commission proposal (COM(2021) 563) restructuring the Union framework for the taxation of energy products and electricity

- EURACOAL supports the concept of energy taxation based only on the energy content of fuels. In practice, coal has been priced and sold on an energy basis for many decades.
- For a ten-year transition period, fossil gas would benefit from a lower tax rate than coal. EURACOAL cannot support this relief and does not understand why any fossil fuel should be given such temporary support given that the EU aims to eliminate the use of all fossil fuels.
- The proposed introduction of an "environmental performance" component to energy taxation is unwelcome. Rates appear to be based on the carbon emissions of fuels. This would duplicate the regulation of carbon emissions which are already covered by emissions trading (EU ETS). Minimum tax rates should be based only on energy content.
- The impact assessment shows that the proposal would introduce a regressive tax: the increased tax on fossil fuels would have a disproportionately greater impact on low-income households. This would be especially the case for EU citizens who rely on coal for heating.
- Given that the proposal concerns taxation, it should only be agreed according to Article 113 of the Treaty on the Functioning of the European Union (TFEU) which requires a special legislative procedure whereby the Council acts by unanimity on taxation matters.
- EURACOAL does not support the Commission's proposal to treat the Energy Taxation Directive as a piece of environmental legislation that can be agreed by the normal legislative procedure with qualified majority voting (QMV). This would set a worrying precedent as every action has an environmental impact. QMV could be extended to each and every piece of EU legislation, thus diminishing the power of member state governments to properly represent their citizens.
- EURACOAL rejects the proposed application of minimum taxation rates for fuels used in combined heat and power (CHP) or co-generation plants. High-efficiency CHP is an effective means to lower emissions and national governments should be free to support CHP.

Background

The European Climate Law makes the EU's climate neutrality target legally binding, thus the Commission proposes a package of measures, including energy taxation, to reach this target by 2050, with a new intermediate target of at least a 55% net greenhouse (GHG) emission reduction by 2030 compared with 1990.

The Council of the EU conclusions, adopted by EU finance ministers (ECOFIN) at their meeting on 5 December 2019, supported an update of the Energy Taxation Directive (ETD) so that it contributes to the EU's wider economic and environmental policy objectives. The Commission proposal for a "Council Directive restructuring the Union framework for the taxation of energy products and electricity" (COM(2021) 563) would recast Council Directive 2003/96/EC of 27 October 2003.

Figure 1 – Summary of the conclusions agreed on energy taxation by ECOFIN on 5 December 2019[1]

> The Council adopted conclusions on the EU energy taxation framework.
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> The Council gave its support to an update of the legal framework for energy taxation which will contribute to wider economic and environmental policy objectives.
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> The conclusions are a direct response to the European Council's call to advance work on the conditions, incentives and enabling framework to ensure a transition to a climate-neutral EU, in line with the Paris Agreement. The aim is to contribute to the policy objectives and measures to achieve the environmental, energy and climate targets for 2030, while preserving European competitiveness, ensuring just and socially balanced rules and respecting member states' right to decide on their own energy mix.

Energy taxation is one of the ways for the EU to reach its climate and environment ambitions by encouraging consumers to use less energy as well as switching to cleaner energy sources, moving away from fossil fuels such as coal, oil and gas. The EU's energy taxation framework was last updated in 2003 and the Commission considers it to be now out of step with the European Green Deal. Different energy tax rates in members states can also potentially disrupt the good functioning of the EU internal market.

The Energy Taxation Directive sets out rules and minimum excise duties for the taxation of electricity and energy products used as motor fuels and for heating. Revised minimum excise duty rates for fuels would ensure that they are taxed according to their energy content (€/GJ) and "environmental performance", and address tax exemptions that favour certain fossil fuels and economic sectors. That said, certain reduced or zero rates would remain possible, such as those for electricity or advanced energy products produced from renewables (*e.g.* hydrogen, synthetic fuels, e-fuels and advanced biofuels), for primary sector industries such as farming, for maritime shipping and for cargo flights.

Key measures proposed under the restructuring, with effect from 1 January 2023:

- Fuels would be taxed according to their energy content and "environmental performance" rather than volume (Table 1). In this way, the environmental impacts of particular fuels should be better reflected, driving energy consumers away from the most polluting fossil fuels. For example, diesel currently has a lower minimum rate than petrol following the past promotion of diesel in the EU as a climate-friendly fuel – a distortion that would disappear.

- The way in which energy products are categorised for taxation purposes would be simplified. Fuels that are most harmful to the environment would be subject to higher minimum rates.

- Exemptions for certain products and home heating would be phased out, so that fossil fuels could no longer be taxed below EU minimum rates, but leaving member states free to support vulnerable households and protect against energy poverty with, for example, targeted exemptions for a ten-year transition period.

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[1] European Council doc. no. 14851/19, 5 December 2019

- The real value of minimum tax rates has eroded over time and the vast majority of member states tax most energy products and some electricity considerably above the Energy Taxation Directive's minima. The proposed minimum rates would be adjusted to reflect the most recent prices and annually adjusted based on a Eurostat consumer price index.

- Fossil fuels used as fuel for intra-EU air transport (*e.g.* kerosene), certain maritime transport (*e.g.* heavy fuel oil) and fishing would no longer be fully exempt from energy taxation. Over a ten-year period, the minimum tax rates for these fuels would gradually increase.

Table 1 – Proposed tax rates under the revised Energy Taxation Directive

€/GJ	motor fuel	heating
coal, oil, non-sustainable biofuels	10.75	0.9
natural gas, LPG	7.17	0.6
sustainable biofuels	5.38	0.45
electricity, renewable H_2, e-fuels	0.15	0.15

For coal, the proposed minimum rate for heating of 0.9 €/GJ is equivalent to a tax of 26.38 €/tce (tonne of coal equivalent), adding significantly to the cost of using coal: typically by around +25%.

The proposal aims to tax energy, not carbon which is separately priced under the EU ETS and the new ETS for road transport and buildings. However, while the Commission claims that its proposal avoids double taxation by not including a CO_2 specific tax component, fossil gas will benefit from a lower rate than coal. The 7.17 €/GJ and 0.6 €/GJ rates, these being two-thirds of the full fossil fuel rates, would apply to fossil gases for a ten-year transitional period. Low-carbon hydrogen and related fuels will similarly benefit from the lowest rate for a transitional period of ten years.

Figure 2 – Coal barge on the Moselle River, Cochem, Germany
the Strasbourg Agreement of 1952 provides for the tax exemption of gas oil used by barges on the Rhine and its tributaries and other waterways

EURACOAL Responses

EURACOAL supports the European Commission’s efforts to align the Energy Taxation Directive (ETD) with other measures such as the EU ETS, the new ETS for road transport and buildings, the Renewable Energy Directive and the Energy Efficiency Directive.

Energy taxation and environmental performance

Sectors falling under the existing EU ETS and proposed new trading system for road transport and buildings have a clear pathway ahead that leads to zero emissions. These sectors should not therefore be the target of any additional taxation for environmental or climate reasons. The EU ETS should remain the only instrument used to drive down CO_2 emissions from the power sector: it delivers the politically agreed climate-neutrality target.

EURACOAL seeks a change to the proposed minimum rates to treat all fossil fuels in exactly the same way with a purely energy-based tax – see Box 1.

Energy taxation and burden sharing

According to the European Commission’s evaluation of the ETD published in 2019, a revision of the directive would allow “green” renewable electricity to be taxed more lightly than “brown” electricity. However, this would be discriminatory and further exaggerate the cost of energy transition in some member states. For example, in 2016, €57 billion was spent in support of renewable power generation in the EU or over €100 per person. This subsidy added 17.60 €/MWh to the average cost of all EU electricity (CEER, 2018). Germany paid the most for renewables: €24 billion to subsidise one quarter of its power production, adding 37.67 €/MWh to the cost of all electricity consumed – more than its wholesale value. Not all countries can afford to invest so heavily in renewables, especially as conventional plants must also be kept operating as backup. The European Commission recently emphasised the importance of such backup plants with its approval on 27 August 2021 of the Belgian capacity market mechanism which is open to all technologies including fossil fuels.[2]

The total additional cost of transition, over and above business-as-usual, is estimated by the European Commission to be €175 billion to €290 billion each year out to 2050 (COM(2018) 773). This would achieve net-zero emissions at a cost of up to US$10 trillion – more than €500 each year for every EU citizen. The vast majority of this investment must come from the private sector, including from individuals who must choose how to heat and light their homes, and how to travel. Investments made by individuals and industry will determine future emissions. Thus, the Energy Taxation Directive should complement the EU ETS by covering only non-EU ETS sectors. It should not add to the tax burden on industry.

Looking to the longer term, the European Commission may envisage energy taxation as a basis for its future income, independent of member states. If EU policies are successful, then “brown” taxes would eventually fall to zero. In a baseline scenario, energy tax revenues are projected to decrease by nearly 32% between 2020 and 2035 due to decreasing energy use and a shift away from fossil fuels. To maintain revenues, “green” taxes would logically have to rise, as proposed by the Commission, which would help member states secure revenues from taxes less detrimental to growth than taxes on labour. However, at the same time, it would be detrimental to the uptake of new, cleaner energy sources.

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[2] SA.54915 Market wide capacity mechanism in Belgium

Life-cycle carbon emissions, energy costs and industrial competitiveness

To reach EU climate targets requires life-cycle carbon emissions, including upstream emissions from the supply of energy, to be addressed. Life-cycle emissions may have to be estimated in the case of imported fuels. Energy taxation alone does not achieve this outcome as it does not address emissions along supply chains.

In terms of the energy transition and a move to all-electric solutions with sector coupling and hydrogen strategies for industry, it is important not to forget the impact of power prices on those with legacy responsibilities. For example, in countries with former coal mines, the management of mine water is energy intensive and this activity should not be burdened with additional taxes.

Finally, Europe must remain a viable industrial region if it wants to be a leader in the energy transition with high standards of environmental protection and energy efficiency while, at the same time, providing prosperity for its citizens. Here, the impacts of carbon leakage cannot be ignored. These need to be dealt with separately to protect all those industrial sectors that are burdened by the heavy costs of emissions trading or energy taxes.

Tax exemption for fuel used in combined heat and power (CHP)

Under the current directive, EU member states may give total or partial tax exemptions or reductions for fuels used for combined heat and power (CHP) or cogeneration, as well as to the electricity produced from "environmentally friendly" CHP generation (Article 15 (1) c and d). The new proposal further defines the definition of "environmentally friendly" CHP generation as "high-efficiency generation as defined in the Energy Efficiency Directive" and limits the tax exemptions for CHP fuels to the proposed new minimum taxation rates.

EURACOAL rejects this proposal. High-efficiency CHP or cogeneration is a sensible and viable way to quickly reduce emissions. The EU should support CHP for a transitional period until completely carbon-neutral district heating becomes technically and economically feasible.

Legal basis

The Commission proposes using a different legal basis for intervention. Instead of Article 113 of the Treaty on the Functioning of the European Union (TFEU) which requires a special legislative procedure whereby the Council acts by unanimity on taxation matters, it argues that decisions should be made according to TFEU Article 192 which covers environmental measures, including measures of a fiscal nature. This would allow the European Parliament and the Council to adopt proposals on energy taxation through the ordinary legislative procedure by qualified majority voting (QMV).

The suggestion to change the legal basis for intervention, from a special legislative procedure requiring unanimity to the ordinary legislative procedure by qualified majority voting (QMV), does not find support among EURACOAL members. Any harmonisation of taxation across member states should only proceed on the basis of unanimity in Council. Member states must remain in control of what can become a burden on their citizens.

29 October 2021

Box 1 – Environmental performance

The Commission proposes to include an "air pollution component" within energy taxation based on a subjective assessment of a fuel's "environmental performance". However, at the same time, the Commission's approach is clearly to tax carbon:[3]

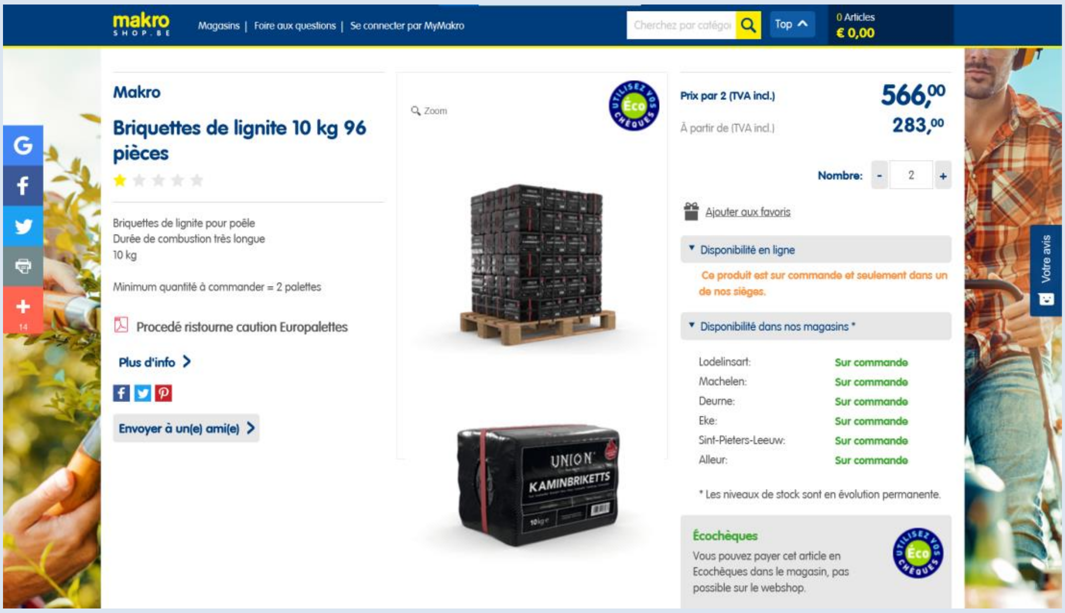
> *The ongoing revision of the ETD, planned for the second quarter of 2021, includes as one possible option for discussion,* ***taxation rates based on a carbon content to the sectors not covered by the ETS, on top of the energy content****. This option would incentivize products with low or zero content (as hydrogen, advanced biofuels and renewable electricity) and would allow to* ***differentiate among various fossil fuels, such as less CO_2 intensive natural gas and more CO_2 intensive coal****.* [emphasis added]

The EU ETS and the ETD would overlap, as both would send a carbon-price signal to end users, ultimately reducing GHG emissions. However, this would be accompanied by a severe distortion of the energy market, favouring fossil gas, and yet it would fail to address "environmental performance".

The introduction of an "environmental performance" component of energy taxation is unwelcome. Rates appear to have been determined by the carbon emissions of fuels. This would duplicate the regulation of carbon emissions already covered by the EU emissions trading system. Moreover, the proposed taxation rate would have a negative social impact through substantial increases in the prices of coal and biomass used for household heating.

The European Commission assumes that the "environmental performance" of all types of coal is the same. This is not the case. For example, raw lignite is considerably more polluting when used for residential heating than manufactured fuels such as lignite briquettes and fuels made from high-rank hard coals such as anthracite. In many member states, governments and local authorities have attempted to shift consumers away from the poorest quality solid fuels to cleaner-burning solid fuels such as briquettes. There are also blended manufactured fuels with coal and renewable biomass. As it stands, the Commission's proposal would undermine these efforts by taxing all solid fuels at the same rate, despite widely differing environmental performances.

Figure 2 – Clean-burning lignite briquettes qualify as an eco-fuel in Belgium



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[3] SWD(2021) 601 part 2, p.134