



Mr. Vincent Van Peteghem

Deputy Prime Minister and Minister of Finance of
Belgium and President of the Economic and
Financial Affairs Council
Ministère des Finances,
12, rue de la Loi
1000 Bruxelles

28 February 2024

Dear Deputy Prime Minister,

RE: The Proposed Revisions to the Energy Taxation Directive

As the Belgian Presidency takes forward the negotiations on the reform of the Energy Taxation Directive (ETD), BusinessEurope strongly encourages Member States to actively engage in advancing negotiations for a revised ETD.

We are concerned that, to date, the revisions to the Energy Taxation Directive proposed in 2021 have still not secured the unanimous support among Member States.

In light of the EU's ambitious targets and global incentives urging industries and businesses to invest beyond the Single Market, a revised ETD should achieve **a practical and competitive framework for businesses** operating within the EU with measures that **complement, rather than contradict or restrict, the measures set out in other key European policy instruments**.

Specifically, harmonisation with the Green Deal Industrial Plan and policy instruments contained in the Commission's Fit for 55 package – such as the Carbon Border Adjustment Mechanism, the Energy Efficiency Directive, the Emissions Trading Scheme, and the Renewable Energy Directive – is essential for creating an effective approach.

Minimising the economic impact on industries and businesses will be important to sustain the attractiveness of the Single Market. This becomes even more important when considering the targeted incentives that are being offered in other parts of the world. To foster investment in renewable and low-carbon energy products, businesses will need a well-structured and attractive system that enables them to effectively navigate the overall price burden resulting from comprehensive energy and climate policies, thereby ensuring a conducive environment for sustainable investments.



The provisions of the ETD **should not come into effect retroactively**, but, instead, allow for a lead time of 18 to 24 months before they become enforceable. In addition, **a sustainable and fair transitional period** will be an important and crucial buffer to alleviate the immediate burden on businesses, affording them the necessary time to develop and invest in alternative strategies, fostering a more resilient and adaptive business environment to evolving regulatory frameworks.

Set out in the Annex to this letter are BusinessEurope's specific technical considerations for Member States to consider as negotiations progress on this file. We believe these will help achieve a cohesive framework that aligns with the current realities of the energy mix, ensuring sustainable revenues for Member States derived from energy consumption.

Such a forward-looking approach is essential to harmonise energy taxation measures with the evolving energy landscape and promote the economic vitality of the Single Market.

We remain at your disposal if we can be of further assistance.

Yours sincerely,

Markus J. Beyrer



ANNEX I

SPECIFIC TECHNICAL CONSIDERATIONS ON THE PROPOSED REVISIONS TO THE ENERGY TAXATION DIRECTIVE (ETD)

Further to BusinessEurope's position paper of November 2021¹ setting out our views on how the ETD should be reformed, BusinessEurope continues to be supportive of the Commission's proposed changes aimed at defining the taxable base structure and instituting a component-based taxation approach. These measures are key to provide the appropriate price signal, fostering increased investment in renewable and low-carbon energy carriers characterised by higher decarbonisation potential. The exclusion of mineralogical processes is also met with approval, as it prevents a higher tax burden for this sector.

Additionally, we express support for the permanent differentiation in tax rates between business and non-business usage. This differentiation not only promotes a competitive landscape for businesses but also empowers Member States to tailor their approaches based on the unique trade intensity of specific sectors or the circumstances of their lower-income households.

However, to ensure a legal and tax framework that provides certainty regarding the treatment of the evolving energy mix, some parts of the ETD will need to be refined. This is essential to prevent undue constraints on the competitiveness of energy-intensive industries and to facilitate the commercialisation of innovative energy products. In this context, we are setting out specific technical points that should be considered in the proposed revisions to the ETD:

1. Transition to an energy content-based taxation system

The current taxation framework of the ETD relies on a volume-based system, where tax is quantified per litre of fuel used (€/litre). We support the proposed revisions to transition towards a taxation structure based on energy content (expressed as €/gigajoule), incorporating a component that accounts for the environmental performance of the fuel. This shift will play a helpful role in intensifying investments in renewable and low-carbon energy products, aligning with the EU's ambitious targets, particularly in the realm of sustainable biofuels and biogas.

Within this framework, it is key to establish clearly defined processes for conversion rates from volume to energy content, such as the component taxation approach outlined in Article 2(6) of the ETD. This ensures that the conversion does not lead to increased tax rates or double taxation, especially in cases where greenhouse emissions are already subject to the carbon price of the Emissions Trading System.

Furthermore, we emphasise the need for comprehensive coordination among various EU policy instruments, including the Green Deal Industrial Plan, the Carbon Border Adjustment Mechanism, the ETS, and the Renewable Energy Directive. This coordination should consider their distinct objectives and collective impacts on the overall price burden for businesses.

¹ [2021-11-18 pp fit for 55 package.pdf \(businesseurope.eu\)](#)



Specifically, the revised ETD should steer clear of an exclusive focus on energy content as that approach could inadvertently prioritise energy efficiency over the broader goal of reaching carbon neutrality by mid-century.

2. An administrative framework for the taxation of blended energy products

With respect to mixtures of one or more products, the proposed revisions to the ETD envisage a shift in the taxation methodology. Instead of assessing the mixture as a singular entity, the revisions advocate for a component-based taxation approach. Under this approach, the taxation of the mixture may be calculated by considering the energy content and environmental impact of each individual component, thereby offering a more nuanced and environmentally sensitive taxation framework.

BusinessEurope is supportive this approach which would allow Member States to tax different components of an energy product separately, based on the applicable minimum rates and independently from the CN code under which the product falls as a whole. We believe that this approach is likely to incentivise the production of renewable and low carbon energy products and develop a more diverse, resilient and cost-efficient energy supply in the medium and long term.

It is clear that Member States may find it difficult to implement a component taxation framework in a harmonised manner and will require flexibility in how they structure taxes of different components of energy products. However, businesses will require guidance on the appropriate assessment and tax reporting methodology to be adopted for blended energy components.

In this respect, in our letter of March 2023², BusinessEurope has put forward four methodologies (a prepaid assessment method, a monthly tax declaration method, categorisation of energy products based on CN codes, and a methodology based on the Renewable Energy Directive) that Member States might adopt, individually or combined, all of which could be a means to achieve a robust system of component taxation envisaged in the proposed revisions of the ETD, that prevent tax fraud and improve legal certainty for businesses.

In respect of all these methodologies, we encourage the use of digital and online processes to calculate the real volumes of different components as this makes it easier and more efficient for businesses to determine their tax liabilities correctly.

3. Clarification on the application of minimum tax rates for hydrogen

Hydrogen can be produced from diverse sources through various production methods, and its utilisation does not yield distinct products. This versatility positions hydrogen as a multifunctional resource, serving not only as an energy product for combustion, essential for propulsion or heating, but also as a crucial feedstock, contributing to processes such as

² [2023-03-01 component taxation in the etd - businessseurope letter.pdf](#)



ammonia production. Additionally, hydrogen functions as an energy storage medium, facilitating the transport of electricity generated remotely and powering fuel cells. Its role is key in advancing carbon neutrality, as the EU endeavours to reduce its dependence on fossil fuels and embraces renewable and low-carbon alternatives to decarbonise industries and transportation.

Whilst the proposed revisions to the ETD foresee different rates of taxation in Article 5(2) that may apply to hydrogen depending on the type of production that is used (namely for renewable hydrogen, fossil-based hydrogen with carbon capture, non-renewable fossil-based hydrogen and low carbon hydrogen), there is a lack of clarity regarding the practical application of these rates. Further clarification is essential to understand how the varied base minimum levels will be applied to the different categories of this energy product.

Given the pivotal role of hydrogen in facilitating the energy transition across diverse sectors, it becomes important to prevent impediments in its production, distribution and consumption arising from fiscal regulations that may prove impractical in application. Whilst in the proposed amendments to the ETD, there exists an incentive structure favouring the production and utilisation of hydrogen through preferential tax treatment, it is important to establish stringent emissions standards to ascertain that tax exemptions are exclusively extended to hydrogen that is produced and utilised in a manner aligning with these standards. Offering tax exemptions for hydrogen as an electricity storage medium may inadvertently encourage the adoption of less efficient storage methods. Therefore, in the case of hydrogen produced from electricity, tax levels should align with those applicable to electricity, fostering a balanced and environmentally conscious approach to taxation.

4. Biofuels

BusinessEurope supports a comprehensive review of the ETD to better reflect the use of liquid and gaseous biofuels. Whereas we support the exclusion of solid biomass used in heating systems from the scope of the ETD, liquid and gaseous biofuels hold significant potential to achieve the EU's climate targets and fostering economic growth. The current proposal falls short in adequately acknowledging and incentivising their use.

Transitioning to biofuels and biogas presents a cost-effective alternative, especially in the context of renewable heating systems, production systems and transport. Beyond the environmental advantages, this transition has the potential to stimulate local economies and generate employment opportunities. Embracing biofuels aligns with broader economic and environmental objectives.

As recognised in the Commission's proposal, there is a pressing need to reassess energy taxation to encourage the transition towards decarbonised energy sources. In this context, aligning tax policies with the sustainability criteria set out in directives such as the Renewable Energy Directive (RED) can accelerate the uptake of renewable energy solutions. Whereas we support the explicit alignment with RED as foreseen in Articles 5(c) and (d) of the Belgian Presidency compromise text of 6 February 2024, we strongly suggest that the definition of 'advanced biofuels' in Annex III of the ETD also refers directly to RED (as opposed to copying its content) to ensure alignment between the two directives.



5. Electricity produced from combined heat & power generation (CHP/co-generation) exemption

The current ETD lacks clarity on the criteria for tax exemption for electricity generated through combined heat and power generation (“co-generation”). Whilst we appreciate the inclusion of an option to grant a tax exemption for “co-generation” when electricity production aligns with the EU Directive on energy efficiency, we strongly advocate for transforming this exemption into a mandatory provision. This would ensure a more consistent and enforceable application across relevant scenarios. Combined heat and power generation can significantly enhance the competitiveness of energy-intensive industries, as recognised in the provisions of the Energy Efficiency Directive.

We refer to the decision of the Court of Justice of the European Union (CJEU) – C31/17 (Cristal Union, the legal successor to Sucrerie de Toury SA v Ministre de l’Économie et des Finances) concerning energy products used for combined heat and power generation. In this decision, the CJEU clarified that the mandatory exemption from taxation of energy products and electricity used to produce electricity should also apply in relation to electricity produced via the process of co-generation. The decision also stresses the significant role of co-generation in achieving the EU’s environmental objectives and calls for clear incentives for the promotion of this technology, including through the taxation of energy products. On this basis, we believe it is important for this exemption to be reflected in a revised ETD.

The option for Member States to tax the portion of the energy products that is allocated to the production of heat risks penalizing an energy-efficient technology like co-generation compared to the full, mandatory exemption applied to conventional electricity generation.

6. Aviation and waterborne navigation

We believe that CO₂ reductions in aviation and the maritime sector can be best achieved through global and market-based measures via the International Civil Aviation Organisation and the International Maritime Organisation. Unilateral measures by the EU and its Member States such as the taxation of fuels in aviation and maritime transport would substantially reduce the investment capacity of these hard-to-abate sectors into new decarbonisation technologies, including alternative sustainable fuels, as well as risk shifting traffic flows away from EU hubs leading to a loss of connectivity and competitiveness.

In this context, we note that different initiatives are taken in other parts of the ‘Fit for 55’ package to reduce the emissions in these sectors. In particular, the EU Emissions Trading Scheme has been extended to shipping and tightened in aviation. Moreover, the RefuelEU Aviation and FuelEU Maritime initiatives introduce sector specific decarbonisation targets and binding quotas for the deployment of high-quality sustainable fuels in Europe.

The EU’s ambitious climate policy already leads to competitive disadvantages for European airlines and shipping companies as well as airports and seaports vis-à-vis their non-European competitors. The introduction of a tax on kerosene and fuels for maritime transport would exacerbate these distortions of competition and facilitate carbon leakage. The proposed



extension of the transitional periods only postpones these issues and is therefore not a suitable solution. As such, a tax on fuels for maritime transport and aviation should be excluded from the discussions on the revision of the ETD to reach an agreement for the other affected sectors and modes of transport.

To promote climate protection in aviation and maritime transport, Member States should focus on introducing competition-neutral instruments to close the cost gap between fossil and sustainable fuels. Furthermore, the ramp-up of sustainable fuels requires attractive and reliable funding frameworks, the removal of investment barriers as well as the pragmatic deployment and crediting options for sustainable fuels through book and claim systems.

7. Definition of ‘environmental policy’

The proposed revisions to the ETD incorporate specific derogations available to Member States, enabling them to restrict the scope of the tax exemptions for energy products and electricity used to produce electricity on the basis of environmental policy considerations.

To foster a harmonised implementation of this derogation, it is essential to articulate a more explicit definition, delineating the circumstances under which this provision can be applied. Such clarity is instrumental in promoting a level playing field across Member States and ensuring consistent application of the regulatory framework.

8. Interaction of tax exemptions with the EU State aid rules

Where specific optional tax exemptions on energy products are adopted by Member States, these may be subject to long and complex state aid rulings, introducing a level of uncertainty for businesses. To mitigate uncertainty, especially during a period where businesses are transitioning towards greener production processes, the ETD should set out comprehensive, clear, and unequivocal exemptions, particularly for products that can significantly contribute to the ongoing decarbonisation of the economy.

As negotiations progress, it will be important to establish a mechanism whereby any energy tax reductions or exemptions permitted by the ETD automatically align with the EU's State aid rules. This would obviate the need for additional and burdensome procedures, such as notification and the demonstration of necessity and proportionality of the aid or tax reduction in question, for both taxpayers and Member States. Such an approach would streamline processes, ensuring efficiency and reducing unnecessary complexities in the implementation of energy tax measures.