

# Review of the Energy Taxation Directive

*This briefing is one of a series of implementation appraisals produced by the European Parliamentary Research Service (EPRS) on the operation of existing EU legislation in practice. Each briefing focuses on a specific EU law that is likely to be amended or reviewed, as envisaged in the European Commission's annual work programme. Implementation appraisals aim at providing a succinct overview of publicly available material on the implementation, application and effectiveness to date of specific EU law, drawing on input from EU institutions and bodies, as well as external organisations. They are provided by the Ex-Post Evaluation Unit of EPRS to assist parliamentary committees in their consideration of new European Commission proposals, once tabled.*

## SUMMARY

With the adoption of the European Green Deal (EGD) in December 2019, the EU signed up for the transition to a modern, resource-efficient and competitive economy with no net emissions of greenhouse gases (GHG) in 2050 and economic growth decoupled from resource use. As a medium-term target towards the 'net zero' long-term goal, the EU committed to an increased climate ambition of at least 55 % in GHG emission reductions by 2030, as endorsed by the European Council in December 2020<sup>1</sup> and reconfirmed in the recent agreement reached by Parliament and Council on the European Climate Law.<sup>2</sup> Among many other measures, this will require effective carbon pricing and the removal of fossil fuel subsidies. In this context, well-designed taxes play a direct role by sending the right price signals and providing the right incentives for sustainable practices of producers, users and consumers. Energy taxation can thus steer a successful energy transition, driving low GHG emissions and energy-saving investments. Moreover, taxes on energy use can help to limit health damage from local pollution.

In order to rise to this challenge, a legal framework fit for purpose is essential. While Council Directive 2003/96/EC restructuring the Community framework for the taxation of energy products and electricity (referred to as the 'Energy Taxation Directive' – ETD) lays down minimum taxes for certain energy products and electricity in order to ensure the proper functioning of the internal market and prevent competitive distortions, an ex-post evaluation presented by the European Commission in September 2019 revealed the significant shortcomings of this directive and its implementation. These relate, in particular, to highly divergent national tax rates across the EU, a wide range of exemptions and reductions applied by the Member States (resulting, in some instances, in de facto fossil fuel subsidies) and a lack of alignment with other EU climate and energy legislation, as well as the objectives of the EGD. The evaluation also illustrated that, as the vast majority of Member States currently apply tax rates above the minima set by the directive, the minimum tax rates have lost their initial converging effect, intended to avoid competitive distortions in the Union.

In order to tackle these shortcomings and align the ETD with the EGD and the increased climate ambition it contains, the Commission is planning to present a proposal for its revision in summer 2021. This revision forms part of a comprehensive set of policy reforms to deliver on the increased climate ambition for 2030 ('Fit-for-55-Package').<sup>3</sup>

## 1. Background

This briefing examines the **implementation of Council Directive 2003/96/EC restructuring the Community framework for the taxation of energy products and electricity (the 'Energy Taxation Directive' – ETD)**,<sup>4</sup> in preparation for the European Commission proposal for its revision, which is due in the second quarter of 2021 and will be accompanied by an impact assessment.<sup>5</sup>

EU legislation on excise duties (i.e. indirect taxes on the sale or use of specific products, the revenue from which goes to the Member States in its entirety) was largely prompted by the launch of the single market in 1993. As tax controls at the borders between Member States were abolished, common rules were needed to facilitate cross-border trade in certain products and to prevent competitive distortions. Therefore, EU legislation was adopted to ensure that excise duties for certain products were applied in the same way, and to the same products throughout the single market, and that Member States applied (at least) a minimum rate of excise duty.

Before the entry into force of the ETD in 2003, the Union framework for energy taxation only covered mineral oils.<sup>6</sup> The ETD widened the scope of the previous directives by laying down common rules for the taxation of all energy products used as motor or heating fuel, and of electricity. By extending the scope to other sources of energy and establishing minimum rates for all energy products, the **ETD was aimed primarily at removing competitive distortions** between mineral oils and non-regulated products used in transport, and for heating and electricity, and at avoiding tax competition between Member States (as the latter could cause the relocation of businesses to Member States with more lenient energy taxation. However, since adoption of the ETD in 2003, energy markets and technologies in the EU have undergone significant development, and the EU's international commitments, including the Paris Agreement, as well as its regulatory framework and policy objectives in the area of energy and climate change, have also evolved considerably.

The Commission presented its **first proposal<sup>7</sup> for revision of the ETD** in 2011, in order, not least, to align the directive more effectively with the energy market and climate challenges. The proposal was designed in part to tax energy products so as to reflect both energy content and CO<sub>2</sub> emissions, as under the current ETD, most of the minimum tax rates are based on the volume of energy products consumed rather than their energy content. As the energy content of biofuels, for instance, is lower than that of fossil fuels per given volume, the tax burden on biofuels (which are taxed at the rate of the corresponding conventional fuel) is potentially higher compared with the same volume of competing fossil fuel.<sup>8</sup> Energy taxation based on volume therefore incentivises energy use contrary to the EU energy and climate goals and discriminates against renewables. Moreover, the proposal intended to achieve better coordination with the EU emissions trading system (ETS), as, owing to the difference in scope, some energy-consuming operators are currently covered by both the ETD and the ETS, while others are covered by neither. The proposal was also aimed at removing the special treatment of energy consumers in certain Member States. After inconclusive discussions among Member States in Council, the **Commission withdrew its proposal** in 2015. Both Parliament and the European Economic and Social Committee (EESC) had issued a positive opinion.

It should be noted, in this context, that **revision of the ETD requires unanimity in Council**, after consulting the European Parliament and the EESC (as the ETD's legal basis makes it subject to a special legislative procedure, explained below). Therefore any Member State can block revision of the ETD, in contrast to other energy and climate legislation where the ordinary legislative procedure applies (with qualified majority voting in Council and the European Parliament on an equal footing).

In September 2019, the European Commission presented an **evaluation report of the ETD** that revealed that the directive no longer delivered the same positive contribution as when it first came into force in 2003 (see Section 2 below for further details on the outcome of the evaluation).

In December 2019, in its **communication on the European Green Deal**,<sup>9</sup> the Commission announced a **revision of the ETD**, stressing the importance of effective carbon pricing throughout the economy as well as the need to align taxation with the climate objectives. In order to ensure

that the price of transport reflects its impact on the environment and health, fossil fuel subsidies should end and current tax exemptions, including for aviation and maritime fuels, should be looked at closely. Prior to the presentation of the EGD, **Council**, in its conclusions on the EU energy taxation framework adopted in early December 2019<sup>10</sup> had **agreed to a revision of the ETD**; this is important considering the unanimity requirement.

As outlined in the Commission's **inception impact assessment**<sup>11</sup> of March 2020, the **main objectives** of the upcoming revision of the ETD are:

- i) to **align taxation of energy products and electricity with EU energy and climate policies** so as to contribute to the EU 2030 targets and climate neutrality by 2050 in the context of the EGD;
- ii) to **preserve the EU internal market** by updating the scope and structure of rates and by rationalising the use of optional tax exemptions and reductions by Member States.

The revision of the ETD is part of a group of policy reforms to deliver on the increased climate ambition for 2030. Along with the ETD review, the **'Fit-for-55' package** will include reviews of the Emissions Trading Directive, the Effort Sharing Regulation, the LULUCF Regulation, the Renewable Energy Directive and the Energy Efficiency Directive, and should be presented in summer 2021.

## Energy Taxation Directive: Current legislation, transposition and review clauses

The ETD lays down EU rules for the taxation of energy products (such as natural gas and coal) used as motor or heating fuels, and of electricity. While the ETD also mentions other policy objectives (such as protecting the environment, improving the international competitiveness of EU companies and redirecting fiscal policy to combat unemployment), its primary objective in 2003 when it was adopted, was to ensure the proper functioning of the internal market. This is also reflected in the legal basis of the directive (former Article 93 of the Treaty establishing the European Community, now Article 113 of the Treaty on the Functioning of the European Union – TFEU), aimed at harmonising indirect taxes, including excise duties, to ensure the establishment and functioning of the internal market and to avoid distortion of competition.

More specifically, the ETD identifies energy products subject to harmonised rules for excise duties, sets minimum levels of taxation (specified in its Annex I) and lays down conditions for applying tax exemptions and reductions. It should be noted that the ETD leaves considerable flexibility to the Member States in designing their energy taxation systems. Accordingly, **Member States are free to apply excise duty rates above the minimum levels of taxation and to introduce additional taxes in accordance with their national needs and environmental ambitions**.<sup>12</sup> By contrast, the **ETD also allows Member States to grant exemptions or apply reduced levels of taxation under certain conditions** (e.g. in Articles 5, 15, 17 and 19). In addition, the directive grants Member States several transitional derogations (e.g. in Articles 18, 18a, 18b and Annexes II and III). As mentioned above, aviation kerosene and fuels used for ships are exempt from the scope of the directive.<sup>13</sup>

The ETD entered into force on 31 October 2003. The Member States had to comply with the requirements laid down in the directive by 1 January 2004.<sup>14</sup> Article 29 of the ETD requires a periodic examination of the directive by Council, based on a report drawn up by the Commission and, where appropriate, a proposal from the Commission. The report by the Commission and the consideration by Council must 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 Treaty.

As mentioned, the ETD is based on Article 113 TFEU. It was therefore adopted under a **special legislative procedure** (with Council acting unanimously after consulting the European Parliament and the EESC). Interestingly, the focus of the upcoming revision should, according to the EGD, be on the environment, thus shifting away from the ETD's initial primary focus on internal market objectives. As also outlined in the inception impact assessment, the Commission intends to use

Article 192 TFEU (environmental measures including measures of a fiscal nature, the '*passerelle* clause')<sup>15</sup> as the legal basis for its proposal for revising the ETD, thereby allowing the European Parliament and Council to adopt legislation in this area through the ordinary legislative procedure, by qualified majority voting rather than by unanimity. While the use of the '*passerelle* clause' as such needs to be agreed by a unanimous decision of Council, this might constitute a real game-changer, considering that the previous proposal for a revision of the directive failed to achieve unanimous support in Council.

## 2. EU-level reports, evaluations and studies

### European Commission ex-post evaluation of the Energy Taxation Directive (August 2017 to September 2019)

In August 2017, the Commission launched an **ex-post evaluation**<sup>16</sup> of the ETD in the framework of the regulatory fitness and performance exercise, resulting in the presentation of an evaluation report<sup>17</sup> in September 2019. In order to gather stakeholders' views on the functioning of the directive, the European Commission carried out a public consultation<sup>18</sup> from March to June 2018, the results<sup>19</sup> of which were taken into account in the evaluation report. The evaluation's findings are also based on targeted stakeholder consultations and an external study.<sup>20</sup> In view of the ETD's forthcoming revision, the Commission ran another public consultation from July to October 2020.<sup>21</sup>

The evaluation looked at the implementation of the various provisions of the ETD and assessed its application by the Member States (in particular unclear provisions, the levels of the minimum rates of taxation, and tax reductions and exemptions). In line with the Better Regulation Guidelines,<sup>22</sup> it assessed the performance of the directive against the basic principles of **relevance, effectiveness, efficiency, coherence and EU added value**. In this context, it attempted to establish whether the ETD had met its main objective (i.e. to support the proper functioning of the internal market) and to assess whether new concerns and challenges had arisen since its adoption that could not be addressed by the directive in its present form.

The evaluation found **significant shortcomings** in both the directive and its implementation. While the ETD could play an important role in the transition to a climate-neutral EU in line with the Paris Agreement and the EGD, its potential to contribute to global and EU efforts aimed at reducing GHG emissions remains largely untapped. According to the Commission, this is due, in particular, to the fact that the ETD has remained unchanged since its adoption in 2003 and is badly out of touch with recent policy developments and priorities, especially in the climate and environment area, and new realities in relation to technologies (such as second and third generation biofuels) and energy markets. This could, in the worst case scenario, result in fossil fuel subsidies and hinder investment in low-carbon technologies. In addition, the minimum rates have become irrelevant to the market as, at present, most energy products, for most energy uses and users, are taxed way above the ETD. Also, highly divergent national implementation and extensive use of optional exemptions by the Member States has led to a highly fragmented internal market, hampering its smooth functioning.

In particular, the evaluation report highlighted the following issues:

#### Effectiveness and efficiency

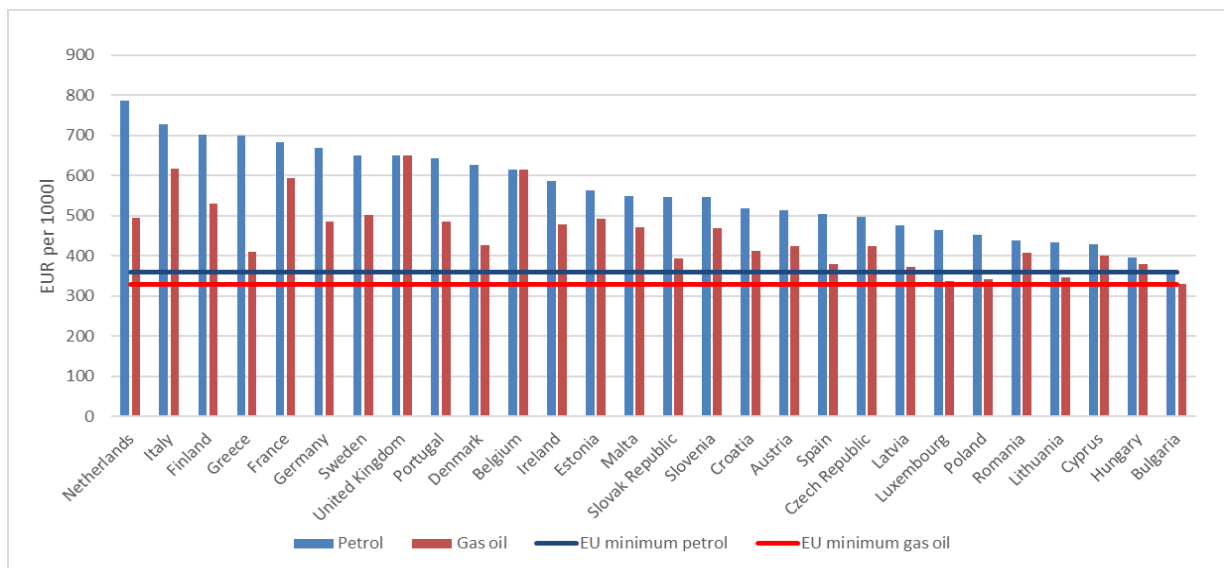
On **effectiveness** (i.e. progress made towards achieving its objectives), the ETD has made only a limited contribution to the smooth functioning of the internal market (its primary objective). This is due, most importantly, to the fact that in the absence of an indexation mechanism or an update of the minimum rates, the initial converging effect of the minimum rates of taxation diminished over time and Member States currently tax most energy products considerably above the ETD minima. As the ETD does not set any maximum rates of taxation, national tax rates differ significantly, not only from the minimum rates but also from each other. The evaluation acknowledged, however,

that the ETD had prevented a possible race to the bottom following the subsequent enlargements of the European Union and might have worked as a 'safety net'.<sup>23</sup>

In this context, it should be noted that propellant fuels (i.e. motor fuels) are in most cases taxed at much higher levels than other forms of energy consumption. Accordingly, the share of excise duties in the final retail price of petrol and gas oil used as a propellant is considerable. By contrast, minimum rates for electricity and heating fuels are too low to contribute to the smooth functioning of the internal market, as they represent only a negligible share of the price of these products.<sup>24</sup>

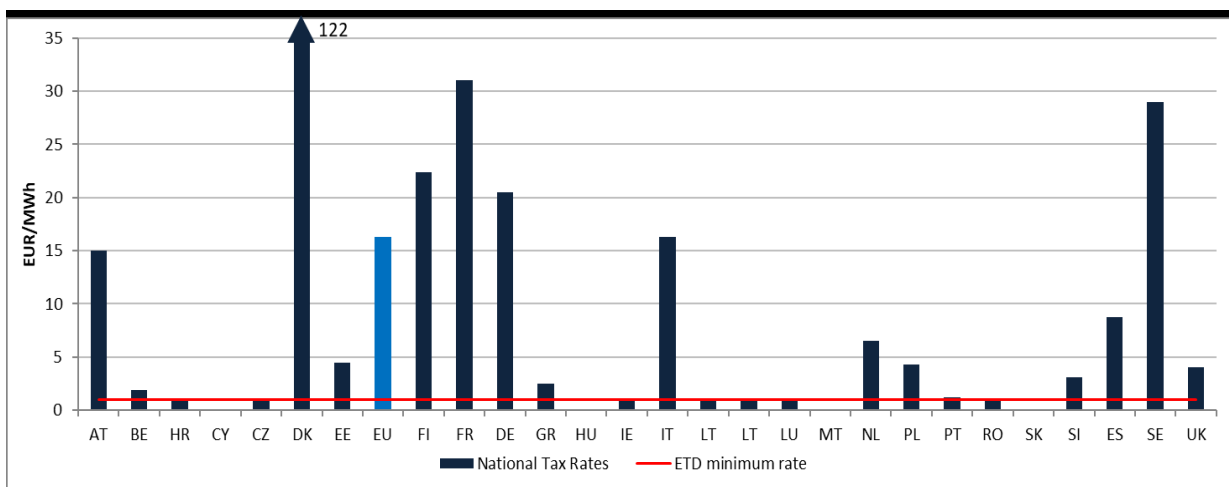
Moreover, the highly divergent implementation of exemptions and reductions by the Member States contributes to an even more fragmented internal market. Although the ETD allows for a more limited number of exceptions in the taxation of petrol and gas oil in road transport use – compared with energy products used for heating, and electricity – Figure 1, below, illustrates that taxation nevertheless differs significantly between Member States in this area.<sup>25</sup>

Figure 1 – 2019 excise duty rates on petrol and gas oil in propellant use in road transport



Source: European Commission, [Taxes in Europe Database](#).

Figure 2 – Minimum and national tax rates for household electricity consumers in 2017



Source: European Commission, [Energy prices and costs in Europe](#), 2018.

Figure 2 shows the divergent national tax rates for household electricity consumers in 2017.

As EU industries have to pay higher energy prices than industries in most G20 countries (with an impact on their global competitiveness, especially in the case of energy-intensive industries), highly divergent rates on electricity and natural gas are applied in combination with a wide range of tax exemptions and reductions in order to safeguard the global competitiveness of EU industries. This, however, increases the fragmentation of the internal market. Exemptions granted in some Member States to large industrial users result in an effective rate 90 % below the nominal rate. In other Member States, the impact of reductions for the same type of consumer is limited to below 5 %.

Last but not least, the ETD does not require Member States deviating from the minimum rates to set national rates in a way that maintains the proportion between the taxation of the different energy products as laid down in the ETD. As a result, no consistent treatment of energy sources is ensured at national level which can lead to inappropriate price signals, discouraging users from choosing greener and more efficient energy sources.

As to the ETD's **efficiency** (i.e. the relationship between the resources required by the ETD and the changes it generated), the evaluation comes to the conclusion that the ETD did not create any considerable regulatory burden or cost for the Member States or economic operators to comply with the directive. Much of the cost and burden comes either from horizontal legislation or national implementing measures. The evaluation stressed, however, the lack of clarity of some of the ETD's provisions, leading to uncertainty that could represent a cost for tax authorities and economic operators, particularly when leading to litigation.

## Relevance and coherence

In terms of **relevance**, the evaluation report clearly shows a considerable gap between the needs of Member States and economic operators today and the objectives the ETD was designed to address at the time of its adoption. This is due mainly to the fact that the ETD has remained unchanged since 2003, while the uptake of new technologies, in particular renewable energy, and the development of environmental, energy and climate change policies have accelerated in the Union. As a result, the ETD lacks coherence with other EU-policies and international agreements, with possible synergies from the alignment of the ETD to other policies currently not exploited, and overlaps, gaps and inconsistencies hampering the achievement of EU objectives in other policies. The ETD thus contributes only to a very limited extent to the wider economic, social and environmental EU policy objectives. More specifically, the evaluation identified the following issues.

### ➤ **The ETD covers a shrinking share of the EU's energy mix**

The share of renewable energy in the EU's energy mix has increased almost three-fold since the ETD was adopted, from 6 % in 2003 to 17.5 % in 2017. This development can be expected to gain further traction in the future, as new energy technologies and products (such as hydrogen, e-fuels and renewable fuels of non-biological origin) are predicted to be key to paving the way to the Union's decarbonised future. Despite the growing relevance of renewable fuels, their tax treatment under the ETD is still based on rules developed at a time when these fuels were niche alternatives without major market significance. Accordingly, the ETD does not set out clear provisions for a growing portion of the Union's changing energy mix and, as a result, cannot ensure preferential treatment for these new energy products, in the worst instances hindering investments in low-carbon technologies.<sup>26</sup>

### ➤ **The ETD's role in promoting biofuels has eroded over time**

The consumption of biofuels has increased 10-fold in the EU since 2003, with the share of biofuels in transport growing from virtually zero to almost 5 % at the time of the evaluation, with a goal of a 10 % share of renewable energy in transport by 2020.<sup>27</sup> By default, however, the ETD applies a favourable tax treatment to fossil fuels compared with low-carbon alternatives. This goes against EU and international commitments to phase out fossil fuel subsidies and is particularly problematic as several Member States might miss their targets for renewable energy in the transport sector.

➤ **The ETD does not differentiate between biofuels, leading to fragmentation of the market and hindering the uptake of advanced biofuels.**

Since adoption of the ETD, second and third generation biofuels have emerged (the former, for instance, from non-food biomass and the latter, for instance, derived from algae), and their environmental performance is constantly improving. As the ETD does not differentiate between these biofuels but allows Member States to apply a preferential tax treatment to biofuels, Member States apply their own, often diverging classifications. As a result, economic operators have no certainty as to whether preferential tax treatment applies to their products in other Member States, creating an insecure business environment for biofuel producers operating across borders. This, in addition, is not in line with the Union's renewable energy framework and, in particular, the sustainability criteria laid down in the Recast Renewable Energy Directive (RED II).

➤ **The ETD does not promote electrification powered by renewable electricity.**

The ETD does not differentiate between low-carbon and carbon-intensive electricity generation. While Member States are allowed to apply tax exemptions and reductions to renewable electricity, EU-wide application of such preferential treatment cannot be ensured. When it comes to electric vehicles, the ETD does not set any specific minimum level of taxation (distinguishing only between business and non-business use) and possibilities to apply tax reductions or exemptions are limited. Similarly, no EU-wide preferential tax treatment is granted to shore-side electricity for ships.<sup>28</sup>

➤ **The ETD is not sufficiently aligned with EU objectives in other policy areas and contributes only to a limited extent to the EU's wider economic, social and environmental policy objectives.**

The ETD has not been updated since 2003 but EU objectives in other policy areas have evolved. As a result, the ETD is currently not aligned or insufficiently aligned with, in particular, the Energy Efficiency Directive, the Recast Renewable Energy Directive, the EU ETS and the Horizontal Excise Directive.<sup>29</sup>

The ETD allows Member States to take into account certain externalities, competitiveness factors and distributional concerns related to other policies. In energy policy, for example, the ETD could potentially support efforts to promote the use of renewable energy and increase energy efficiency. However, the ETD has been less supportive on reducing GHG and other pollutant emissions and on energy diversification and energy independence and security.

Moreover, the ETD includes provisions relating to environmental and climate change policies. The provisions on taxation of biofuels, however, are not in line with the EU energy, climate change and environmental policies, as already explained. Similarly, the ETD does not contribute to EU transport policy objectives (in particular, decarbonisation of transport and reduction of air pollutant emissions) as the minimum levels of taxation on motor fuels do not take into account the differing energy content or environmental cost of these fuels. Moreover, the favourable minimum taxation for gas oil used as a propellant compared with petrol has contributed to the excessive dieselisation of the EU vehicle fleet with negative consequences for air quality. Finally, the mandatory exemption of fuels used in international commercial aviation and maritime transport potentially contradicts the EU's decarbonisation objectives and distorts the level-playing field in the sector.<sup>30</sup> In relation to social policy, the ETD is designed to allow Member States to shift from labour taxation to energy taxation. However, based on the available evidence, it cannot be argued that the ETD has contributed to such a tax shift, as the minimum rates are too low.

## EU added value

When it comes to developments that have resulted from the ETD, compared with what could have been delivered by the national actions of Member States or no action, the evaluation finds that the **EU added value** of the ETD for the functioning of the single market is hampered by the lack of indexation of the minimum rates and highly divergent use of optional exemptions by the Member

States. However, the majority of respondents to the public consultation consider the EU to be best placed to prevent a race to the bottom. Also, for some products taxed at the minimum level in some Member States, the ETD can still work as a 'safety net'. The added value of preserving the internal market's integrity and operating as revenue-generating tool is, however, largely limited by the fact that the directive is significantly outdated. The ETD's contribution to environmental protection is limited and, in some cases even generates negative EU added value.

### 3. European Parliament position / MEPs' questions

#### Resolutions of the European Parliament

The European Parliament has expressed its views on the ETD on numerous occasions. In a resolution<sup>31</sup> adopted in April 2021 on more efficient and cleaner maritime transport, Parliament deplored the distortion of competition on the European market between fossil fuels, which benefit from more favourable tax treatment, and clean alternative fuels from renewable sources, and called on the Commission to address this situation by proposing to restore fair competition rules, applying the polluter-pays principle to maritime transport, and promoting and further incentivising, including through tax exemptions, the use of alternatives to heavy fuels that are considerably reducing the impact on climate and the environment in the maritime sector.

In a resolution<sup>32</sup> adopted in July 2020 on a comprehensive European approach to energy storage, Parliament called on the Commission to introduce an effective taxation system that prohibits double taxation of energy storage projects in its forthcoming proposal for a revised ETD. Furthermore, in a resolution<sup>33</sup> adopted in June 2020 on competition policy, Parliament called on the Commission to examine, in the context of the review of the ETD, whether current tax exemptions provide for unfair cross-sector competition conditions, and to examine whether the tax exemption for kerosene results in a distortion of competition that benefits the aviation sector.

In the previous legislature, Parliament also adopted a resolution<sup>34</sup> in October 2018 on the deployment of infrastructure for alternative fuels in the European Union, noting that taxation has a major impact on the price competitiveness of alternative fuels and calling on Member States to review their energy taxation frameworks in order to facilitate and incentivise the uptake of low-carbon and carbon-free alternative fuels and to remove present disparities in energy taxation between different transport modes, for example on electricity used for shore-side supply for ships and energy used to generate alternative fuels, including power-to-gas as storage for intermittent renewable energies. In its resolution<sup>35</sup> on the renewable energy progress report, adopted in June 2016, Parliament acknowledged that tax cuts are a powerful incentive for making the shift from fossil energy to renewable energy, and urged the Commission to reform the ETD and the State aid rules, which are preventing these incentives from being used to their full potential. Finally, in April 2012, Parliament adopted its position on the 2011 proposal to revise the ETD.<sup>36</sup> In its legislative resolution, Parliament called, inter alia, for consistent treatment of energy sources under the ETD, taxation of energy products to be undertaken in a technologically neutral manner and better coherence with the ETS. The proposed abolition of the preferential tax rates for diesel was, however, rejected.

#### Written questions

##### [Written question](#) by Margrete Auken (Greens/EFA), 15 September 2020

**Subject:** 'Burden-sharing or common European solutions concerning an increased greenhouse gas emissions reduction target for 2023'.

This question concerned the 55 to 60 % greenhouse gas reduction target for 2030. The Member asked whether the target would be obtained primarily through increased national burden-sharing in the non-ETS sectors or merely at EU level, and also whether a combination of national and EU-level measures was being considered.



**[Answer](#) given by Commission Executive Vice-President Frans Timmermans on behalf of the European Commission, 17 October 2020**

The Commission answered that it planned to revise a couple of regulations and directives, including the ETD, in order to reach its target of a 55 % greenhouse gas reduction by 2030. It also stated that it was looking forward to receiving Parliament's views, and replies from all stakeholders, regarding its impact assessment, which illustrated what various reduction efforts would be needed for different ETS scopes and scenarios.

**[Written question](#) by Karima Delli (Greens/EFA), 17 December 2019**

**Subject:** 'Introduction of a European Union tax on kerosene'

The Member noted that kerosene was one of the only fossil fuels that remain untaxed. She stated that the Vice-President in charge of the 'green pact for Europe' (GPfE) had said that the Commission would soon introduce a tax on kerosene, and pointed out that the revision of the ETD would be a good opportunity to introduce such a tax. She therefore asked the Commission to confirm that it would propose legislation introducing a kerosene tax, and asked within what timeframe this would happen, which flights would be covered, which would be excluded, and what level of taxation per litre was envisaged.

**[Answer](#) given by Mr Gentiloni on behalf of the European Commission, 28 February 2020**

The Commission answered that, while the current ETD included a mandatory tax exemption for energy products used in international aviation, Member States were allowed to limit this exemption and apply tax to kerosene used for domestic flights or, with a bilateral agreement, to flights between two Member States. According to the Commission, the introduction of a kerosene tax could be an appropriate measure to address emissions from aviation so as also to ensure a level playing field with other transport modes. However, they stressed that the impact assessment would assess whether other measures could achieve the same objectives, analyse which flights should be covered by a possible fuel tax and investigate the possible negative impacts of aviation tax for islands and peripheral areas that are heavily reliant on aviation.

**[Written question](#) by Rolandas Paksas (EFDD), 4 March 2019**

**Subject:** 'Increasing the use of biofuels'

In this question, the Member recalled the Commission's 2050 targets for CO<sub>2</sub> emission reductions in the transport sector. He stated that recently published research showed that these targets were likely to fail with the current policies in place. He then inquired whether the Commission intended to review the current EU decarbonisation strategy and what measures were planned to increase the use of crop-based and advanced biofuels. He also asked whether the Commission intended to revise the ETD to align it with its 2050 climate targets, and what action the Commission intended to take to increase the use of carbon capture technologies in renewable ethanol plants.

**[Answer](#) given by Mr Arias Cañete on behalf of the European Commission, 27 May 2019**

The Commission explained that it was, at that time, evaluating the ETD and that it would look at the directive's coherence with other EU policies, in particular with energy union objectives. It also stated that the future energy taxation regime should complement and reinforce EU energy legislation to encourage the clean energy transition, while also contributing to sustainable growth and reflecting social equity considerations.

### [Written question](#) by José Inácio Faria (ALDE), 3 December 2015

**Subject:** 'Energy Taxation Directive and the use of diesel fuel'

The Member asked what plans the Commission had, in the context of the Volkswagen diesel fuel scandal, to reform the ETD in order to do away with preferential taxation of diesel fuels.

### [Answer](#) given by Mr Moscovici on behalf of the Commission, 4 March 2016

The Commission pointed out that its 2011 proposal for revision of the ETD had included removal of the tax preference for diesel fuels, but that this element had been rejected by Parliament during consultations and stated that it was currently reflecting on the best way forward for the EU energy transition.

## 4. Council of the EU

In their [Council conclusions](#) on the EU energy taxation framework, adopted on 5 December 2019, EU finance ministers underlined the importance of energy taxation among the economic incentives that steer successful energy transition, driving low greenhouse gas emissions and energy-saving investments while contributing to sustainable growth. They acknowledged that the current directive was not coherent with other objectives of the EU climate and energy policies, the EU legal framework and its international commitments, the changing energy mix and technological development. The ministers therefore supported revision of the ETD. More specifically, any future proposal should ensure greater legal certainty and clarity, coherence with other EU policies and legislation, and also consideration of the social dimension.

## 5. European Economic and Social Committee

In its [opinion](#) on a new institutional framework for energy and climate policy by 2025, adopted in September 2019, the EESC, reacting to the Commission report '[A more efficient and democratic decision making in EU energy and climate policy](#)', welcomed the idea to move energy-related tax matters from unanimity to qualified majority voting under the ordinary legislative procedure, while remaining committed to the subsidiarity principle and applying this procedure to decisions on the least controversial taxes as a priority. EU legislation on energy taxation should take into account the concerns of European businesses, workers and other stakeholders, including consumers, and fit local circumstances, with energy taxation measures possibly requiring EU compensatory funding for the social and economic damage caused. In its [opinion](#) on [taxation/private investment and the sustainable development goals, adopted in December 2019, the EESC considered taxation to be a means to promote environmental protection and](#) compensate for environmental damage shifted from the polluter to society.

## 6. European Committee of the Regions

In its 2019 [opinion](#) 'A Clean Planet for all: A European strategic long-term vision for a prosperous, modern, competitive and climate neutral economy' the European Committee of the Regions (CoR) welcomed the Commission's communication on 'A more efficient and democratic decision making in the EU energy and climate policy', noting that the suggestions on energy taxation it included were essential to ensure a coordinated, coherent and timely response to climate change. In particular, the CoR considered appropriate pricing of fossil-based energy through emissions allowances and socially acceptable taxation to be a key element of the transition to renewable energy. In its [opinion](#) 'Implementing the clean energy package: the NECPs as a tool for a transversal approach to climate, active and passive energy', also adopted in 2019, the CoR underlined the need to ensure that the review of state aid rules and the ETD did not make it impossible to promote sustainable bioenergy. In its 2019 [resolution](#) on the 'Green Deal in partnership with local and regional authorities', the CoR called for an increase in the level of permissible State aid, and subsequent adaptation of the ETD to promote low-emission fuels. It argued that legislation related to the energy transition should take a

technology-neutral and flexible approach. In its 2019 [opinion](#) 'Towards a more efficient and democratic decision making in EU tax policy', the CoR suggested using the *passerelle* clause for environmental taxation from the initial stages of the decision-making process, stressing the urgent need to introduce a coordinated approach with regard to aviation taxation, for instance by imposing a kerosene tax or VAT on air tickets.

## 7. European citizen's initiatives

It should be noted that there are currently two citizen's initiatives ongoing in relation to the ETD. The [initiative](#) 'The fast, fair and effective solution to climate change' aims to introduce a steadily increasing price on fossil fuels, while the [initiative](#) 'Ending the aviation fuel tax exemptions in Europe' aims to introduce a tax on kerosene.

### ENDNOTES

- <sup>1</sup> [Conclusions](#) of 10/11 December 2020, European Council.
- <sup>2</sup> On 20 April 2021, Council and Parliament reached an [agreement](#) on the March 2020 [proposal](#) and the September 2020 [amended proposal](#) establishing the framework for achieving climate neutrality and amending Regulation (EU) 2018/1999 (European Climate Law) in the trilogue negotiations.
- <sup>3</sup> In the [2021 Commission work programme](#) (CWP, p. 1, Annex I), the revisions and initiatives linked to climate action under the European Green Deal and, in particular, the 55 % GHG reduction target by 2030 are presented under the 'Fit-for-55' package.
- <sup>4</sup> [Council Directive 2003/96/EC](#) restructuring the Community framework for the taxation of energy products and electricity.
- <sup>5</sup> [CWP 2021](#), p.1, Annex I, point (h).
- <sup>6</sup> The former legal framework for energy taxation ([Council Directive 92/81/EEC](#) on the harmonisation of the structures of excise duties on mineral oils and [Council Directive 92/82/EEC](#) on the approximation of the rates of excise duties on mineral oils) was repealed by the Energy Taxation Directive and is therefore no longer in force.
- <sup>7</sup> [Proposal for a Council Directive amending Directive 2003/96/EC restructuring the Community framework for the taxation of energy products and electricity](#); see also impact assessment ([Volume 1](#) and [Volume 2](#)).
- <sup>8</sup> In the case of biofuels, when taking the same volume of a product, compared to petrol for instance, the energy content will be lower, requiring consumption of a larger volume of biofuel in terms of litres to achieve the same result. This mechanism results in disadvantageous fiscal treatment of these biofuels compared with petrol or gas oil.
- <sup>9</sup> [Communication on the European Green Deal](#), pp. 5 and 10.
- <sup>10</sup> [Conclusions](#) of 5 December 2019 on the EU energy taxation framework, EU Council.
- <sup>11</sup> [Inception impact assessment](#), 4 March 2020.
- <sup>12</sup> Under the ETD, Member States are allowed to introduce additional taxes, e.g. for environmental purposes. Electricity, for instance, is subject to an output tax under the ETD (i.e. the ETD taxes only the electricity), but Member States may introduce an additional, non-harmonised input tax in case of non-environmentally desirable fuels used to produce electricity.
- <sup>13</sup> The ETD contains two kinds of exemption: 1) mandatory (such as for energy products and electricity used to produce electricity and for aviation and sea navigation fuel), and 2) optional (such as for electricity from renewables, for the transport of goods and passengers by rail, metro, tram and trolley bus or for biofuels and products produced from biomass). Further tax reductions introduced by Member States under the ETD (such as lower tax levels for energy products used in agriculture, stationary motors and machinery for construction and public works) are always optional (and need to be authorised by Council).
- <sup>14</sup> As set out in the impact assessment accompanying the 2011 proposal for a revision of the ETD, 11 Member States transposed the provisions of the ETD into national law with a delay.
- <sup>15</sup> While, pursuant to Article 194(3) TFEU, energy taxation measures are subject to a special legislative procedure, Article 192(2)(c) includes a *passerelle* clause allowing Council (through an initial decision by unanimity) to make the ordinary legislative procedure applicable to energy policy areas where unanimity is formally required under the Treaties (see [EPRS study](#) 'Unlocking the Potential of the EU Treaties', 2020, pp. 59 and 60).
- <sup>16</sup> [Evaluation of the Energy Taxation Directive](#), including [Roadmap](#).
- <sup>17</sup> [Evaluation report](#), 11 September 2019.
- <sup>18</sup> [Public consultation on the evaluation of the Energy Taxation Directive](#).
- <sup>19</sup> As indicated in the [public consultation report](#), published in August 2018, 150 responses and 45 position papers were received. While 20 Member States participated in the public consultation, public authorities accounted for only 2 % of the replies received. The largest group of respondents was business organisations (81 %), while 12 % of the replies came from civil society.
- <sup>20</sup> [Study on technical and legal aspects of Council Directive 2003/96/EC](#), 8 May 2018, Deloitte.
- <sup>21</sup> [Summary report on the open public consultation on the ETD](#), 18 December 2020.
- <sup>22</sup> [Better regulation guidelines and toolbox](#).
- <sup>23</sup> As explained in the evaluation report (pp. 24 and 25), the ETD had an initial one-off converging effect that was strongest for the countries joining the EU after 2004, as on accession all but three of the 13 post-2004 Member States were below the minimum taxation rates for unleaded petrol used as a propellant. Only five of the new Member States were taxing gas oil used as a propellant above the ETD's minimum rates.

- <sup>24</sup> At the time of the evaluation, excise duties made up almost 60 % of the final retail price averages of petrol and 52 % of the final retail price averages of gas oil used as a propellant. As national rates applied by the Member States vary significantly, this resulted in a phenomenon referred to as 'tank tourism', with consumers crossing borders in order to refuel their vehicles at lower prices in bordering regions. By contrast, the ETD minimum rate for natural gas in 2018 accounted for 1.7 % of the average price paid by industrial consumers. The share of the ETD minimum in industrial electricity prices was even more insignificant, as it accounted for less than 1 % of the average final price for electricity.
- <sup>25</sup> Note that nominal rates, as included in the Taxes in Europe Database, should not be confused with the effective tax rates for petrol or gas oil in the Member States or rates included in the price at the petrol pump. In addition to nominal rates, effective tax rates take into account exemptions, reductions and refunds granted by the Member States and are thus more relevant when looking at national implementation and consequent distortions of the internal market. However, only limited data is available on effective tax rates in the Member States.
- <sup>26</sup> While the ETD's classification of products and uses is based on the combined nomenclature (CN), uncertainties arise as several new products and uses cannot be clearly attributed to CN codes, as at the time of adoption of the ETD, they were either insignificant or did not exist at all. The ETD's explicit reference to 'biofuels made from biomass' in Article 16 creates additional uncertainty where biofuels are derived from renewable energy or waste and therefore do not have a biomass origin.
- <sup>27</sup> For the transport sector, the [recast directive](#) on the promotion of the use of energy from renewable sources (RED II) sets targets of a 14 % renewables share, a 3.5 % share of advanced biofuels and biogas (1 % by 2025), and a 7 % cap on the share of first-generation biofuels in road and rail transport, and plans to phase out the use of palm oil (and other food-crop biofuels that increase CO<sub>2</sub> emissions), all to be achieved by 2030.
- <sup>28</sup> Shore-side power allows ships to turn off their engines (powered by tax-exempted fossil fuels) and plug into an electricity grid, thereby realising environmental benefits, e.g. reducing local air and noise pollution and, potentially, GHG emissions.
- <sup>29</sup> [Council Directive 2008/118/EC concerning the general arrangements for excise duty and repealing Directive 92/12/EEC](#).
- <sup>30</sup> Fuels used in domestic aviation and navigation are sometimes taxed, but the rates applied rarely reflect a low-end carbon benchmark (i.e. an estimate of the marginal climate damage costs of fuel use; see [2018 OECD report on effective carbon rates](#), and the [2019 OECD Taxing Energy Use](#) brochure for further details). Moreover, although intra-EU flights are included in the EU ETS, international flights are currently excluded – pending a global agreement on a 'carbon offsetting and reduction scheme for international aviation' (CORSIA). This is problematic given strong growth in air traffic. For international maritime transport, global efforts to limit emissions are led by the International Maritime Organization. At EU level, the Commission is considering including the maritime sector in the EU ETS.
- <sup>31</sup> [Resolution](#) of 27 April 2021 on more efficient and cleaner maritime transport, European Parliament.
- <sup>32</sup> [Resolution](#) of 10 July 2020 on a comprehensive European approach to energy storage, European Parliament.
- <sup>33</sup> [Resolution](#) of 18 June 2020 on competition policy – Annual report 2019, European Parliament.
- <sup>34</sup> [Resolution](#) of 25 October 2018 on the deployment of infrastructure for alternative fuels in the European Union: time to act!, European Parliament.
- <sup>35</sup> [Resolution](#) of 23 June 2016 on the renewable energy progress report, European Parliament.
- <sup>36</sup> [Resolution](#) of 19 April 2012 on the proposal for a Council Directive amending Directive 2003/96/EC restructuring the Community framework for the taxation of energy products and electricity, European Parliament.

## DISCLAIMER AND COPYRIGHT

This document is prepared for, and addressed to, the Members and staff of the European Parliament as background material to assist them in their parliamentary work. The content of the document is the sole responsibility of its author(s) and any opinions expressed herein should not be taken to represent an official position of the Parliament.

Reproduction and translation for non-commercial purposes are authorised, provided the source is acknowledged and the European Parliament is given prior notice and sent a copy.

© European Union, 2021.

[eprs@ep.europa.eu](mailto:eprs@ep.europa.eu) (contact)

[www.eprs.ep.parl.union.eu](http://www.eprs.ep.parl.union.eu) (intranet)

[www.europarl.europa.eu/thinktank](http://www.europarl.europa.eu/thinktank) (internet)

<http://epthinktank.eu> (blog)

