

Position

Revision of the Energy Taxation Directive (ETD)

How energy taxation can contribute to achieving
climate-neutral mobility



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Berlin, November 2021

With the „Fit for 55“ package, the Commission has presented a comprehensive package of 13 legal acts aimed at reshaping the EU's climate policy on a grand scale. With its more than 800.000 employees, the German automotive industry supports the goal of making road transport climate-neutral by 2050 at the latest. It is driving the change and relying on innovations and technologies to do so. It is positive that the Commission is attempting to redesign climate policy in a holistic and comprehensive way.

However, the individual instruments are not sufficiently coordinated, and the complexity of the proposed regulations is enormous. In addition, not enough emphasis is placed on industrial policy flanking the transformation. Above all, however, the ambition of the targets is greater than that of the necessary framework conditions. It is precisely at this point that considerable improvements must be made in the further process, otherwise there is a real danger that the climate targets for the transport sector will not be met. German automakers and suppliers support above all the principle of more overarching, market-based incentive systems in climate policy. We are convinced that only then the EU will be in a position to achieve the climate targets set, which are by far the most ambitious worldwide. We therefore welcome the proposal to introduce a separate emissions trading system for transport and buildings in the EU from 2026, alongside the familiar EU ETS for the energy and industry sectors. The EU ETS system in place since 2005 has shown that effective climate protection can be achieved at the lowest possible abatement costs through comprehensive, market-based incentive systems.

Another building block for achieving the goal of decarbonization is taxation and thus the pricing of energy sources. This is because the price, which is significantly influenced by the taxation of energy sources, is a lever for changing the behavior of users and consumers. Energy taxation could also help to align the different CO₂ abatement costs in the existing EU ETS and in the emissions trading system for transport and buildings planned from 2026, so that full integration and thus holistic CO₂ trading can be achieved more quickly. We therefore welcome the fact that, as part of the „Fit for 55“ package, the EU Commission has also submitted a proposal to revise the EU Energy Tax Directive, which has remained unchanged since October 2003. However, the following recommendations should be taken into account in the further legislative process:

Art. 1 paragraph 2: Taxation based on energy content

The taxation of energy products and electric power is to be changed from a previously quantity- or volume-based taxation to a uniform taxation based on the energy content (EUR/GJ) in accordance with Annex IV of the Energy Efficiency Directive. In principle, the VDA continues to advocate aligning taxation as far as possible with the fossil carbon content of the energy sources. This is because the Commission's ambitious climate targets can only be achieved cost-effectively with a reform of the European energy tax that focuses on the fossil carbon content of the fuel as a measure of the tax level. However, if the transport sector is integrated into the EU emissions trading system as proposed by the Commission, basing taxation on energy content and environmental impact is also a viable way of achieving the targets and avoiding potential overlaps between the two parallel systems.

Art. 2 paragraph 1: Definition of energy products

The expanded definition of energy products is to be welcomed as an important clarification. Due to a lack of definitions, the current Directive was controversial as to whether certain products (e.g. hydrogen) were in the scope of energy taxation. The proposed extension closes the existing gap and generally covers all products used as heating or motor fuel.

Art. 3: Uses outside the scope

We welcome the exclusion of certain uses from the scope of the Directive. However, Member States are free to tax these out-of-scope uses at national level. In order to avoid double taxation at national level, the decision-making authority of the Member States should be limited by granting mandatory tax exemptions. In particular, electricity for electrolysis should be granted mandatory tax exemptions, as this is of utmost importance for the production of green hydrogen. It should also be ensured that the production of hydrogen should not lead to taxation of the electricity used, even if the electricity is purchased externally. Currently, the so-called producer's privilege only leads to a mandatory tax exemption if the products used are manufactured by the company itself.

Art. 5 paragraph 1: Implementation of the minimum tax rate ranking into national law

The Member States shall ensure that the minimum tax rate ranking set out in Annex I is implemented into the national taxation system separately according to product and intended use. A uniform EU minimum tax rate of 10.75 euros/GJ is to apply to both gasoline and diesel as of January 1, 2023. Since diesel fuels have a higher energy content, the EU minimum tax rate for diesel would be higher than for gasoline based on quantity (cents/liter). The implementation of the ranking of minimum tax rates into the national level envisaged by the EU Commission could thus lead to a situation in which the tax rate for diesel fuels in Germany would have to be increased significantly. As a consequence, the relationship between the prices of gasoline and diesel would be reversed from 2023.

Insofar as the directive also proposes that from 2024 the minimum tax rates can be adjusted annually by delegated acts of the Commission, we would point out that this must not relate to the specified framework of the spread. The Energy Tax Directive must create reliable incentives for the development of new technologies. It would be counterproductive if annual evaluations undermined this reliability.

Art. 5 paragraph 1: Optional special taxation of e-mobility

Member States may set a specific tax rate for electricity used for charging electric vehicles. According to the preliminary remarks to the directive, electricity should in principle be taxed at the lowest rate in the transport sector, which we highly welcome. However, as the regulation is not explained in more detail in the draft, this could lead to uncertainty among consumers about the future level of taxation. However, in order not to jeopardize the market ramp-up of e-mobility and the achievement of climate targets, there must be no tax increases compared with the status quo. It must therefore be ensured or clarified that only a separate taxation of e-mobility with a relieving effect is permissible. The tax advantage for e-mobility over fossil fuels is essential for successful transformation. The minimum tax rate for electricity provided for in Table D should also be added to Tables A–C for clarification purposes.

Art. 5 paragraph 2: Indexation of minimum tax rates

As of 1/1/2024, there should be an automated annual adjustment of the minimum tax rates to the development of consumer prices (excluding energy and unprocessed food). However, this would lead to automatic tax increases every year and significantly increase the administrative burden for companies (e. g. in regard to applications for tax exemptions and reductions). An annual adjustment of the minimum tax rates is therefore not expedient.

Indexation of the minimum tax rates also seems unnecessary, because Article 31 provides for regular evaluation of the Energy Tax Directive anyway. The EU Commission is to report on the implementation of the Directive every five years and also review the level of the minimum tax rates. Thus, within the framework of the evaluation, there is the possibility to adjust the EU minimum tax rates to the developments in the meantime, if necessary. Therefore, an annual adjustment of the minimum tax rates and the associated additional administrative burden for companies should be dispensed with.

We are also critical of the far-reaching authorization of the Commission to adjust the minimum tax rates at its own discretion via delegated acts (Art. 5 paragraph 2, 2nd subsection). Such a decision should be left to the Member States alone.

Art. 13: Tax exemption for electricity used in power generation

We welcome the proposed tax exemption for energy products or electricity used in the production of electricity. However, in order to avoid double taxation and to ensure a harmonized application of this tax exemption within the EU, Member States should not be allowed to derogate from the tax exemption. Therefore, Art. 13 paragraph 2 should be deleted in order to maintain the current mandatory tax exemption.

Art. 16 b: Tax exemption or reduction for electricity

We welcome the proposed possibility of tax exemption or reduction for electricity generated from renewable sources (e. g. solar, wind, wave, tidal or geothermal power plants, etc.), which leads to a significant simplification. In order to ensure a uniform application of this provision in the EU and to promote green electricity, the tax exemption for sustainably generated electricity should be made mandatory for Member States at least during a transitional period until 1.1.2033.

Art. 16 d): Tax incentives for sustainable fuels

According to the Commission proposal, Member States may exempt or grant tax incentives for renewable hydrogen, sustainable biofuels, e-fuels and e-gas, among others. While this provision is welcomed in principle, it is to be feared that the member states will only make partial use of these exemption options in order to minimize the loss of revenue for public budgets. To ensure that the climate protection targets can also be achieved for existing vehicles with internal combustion engines, tax concessions for sustainable fuels should be made mandatory for the member states. Ideally, a mandatory zero tax rate should apply throughout the EU for climate-neutral energy sources such as (e-fuels) but also, for example, renewable electricity and advanced biofuels, in order to effectively promote the market ramp-up of these technologies.

Art. 21: Control and promotion provisions

The scope of the control and transport provisions mentioned in Art. 21 should be extended only to energy products for which it is strictly necessary. In particular, the administrative burden should be proportionate to the potential risk of non-payment of taxes.

We welcome the fact that for some energy products, such as lubricants and organic solvents, the control and transport provisions only apply to bulk transport. This relief should also apply to other energy products supplied to customers in individual shipments by small trading units with low tax revenue (e. g. anti-knock agents and fuel additives in 250 ml cans, CN codes 3811).

Art. 22 paragraph 4: Exemption for electricity storage equipment and transformers

We welcome the new exemption for electricity storage facilities and transformers that are considered redistributors when supplying electricity. In these cases, the electricity is not subject to taxation and becomes taxable at the time of supply by the distributor. This clarification or simplification is of great importance in order to avoid double taxation of electricity supplies.

Furthermore, double taxation should also be avoided in the case of electric vehicles (mobile electricity storage). In the future, electric vehicles will be used for intermediate storage of electricity, using electricity for charging, but also feeding electricity back into the public supply network. The Commission's proposal does not currently provide for the possibility of a tax refund for electricity fed into the public supply network. In order to avoid double taxation, in cases where already taxed electricity is fed back into the public supply network, the possibility to apply for a tax refund should be created.

Impact assessment – avoiding double burdens

The EU Commission's proposal to reform the Energy Tax Directive is accompanied by a comprehensive Impact Assessment Report. It presents various scenarios for a reform of the Energy Tax Directive and determines the expected climate policy and socio-economic effects in each case. However, it does not examine the effects of the interaction between new regulations in the Energy Tax Directive and other instruments at national and European level (e.g. Sesta – German Fuel Emissions Trading Act, EU ETS, CO₂-based Eurovignette). These interactions should be carefully analyzed in the further legislative process in order to ensure appropriate taxation and to avoid double burdens as far as possible. This applies in particular to road freight transport, which does not yet have the option of switching to electric vehicles due to the lack of alternatives to diesel-powered commercial vehicles.

Increase legal certainty and reduce tax complexity

- In general, optional tax exemptions should be replaced by mandatory ones. This helps to create a level playing field in the EU in the area of energy taxes. In this way, undesirable side effects such as „tank tourism“ can be avoided and risks under state aid law can be reduced. The more harmonized the system is, the more effectively climate protection targets can be achieved.
- Clear definitions: To improve legal certainty and uniformity in practical implementation within the EU, the directive should also provide for clear definitions (e.g. tax object, operator, person entitled to relief). The clarification already provided on the main tank is to be welcomed.
- Further tax simplifications: This includes, for example, being able to pass on electricity generated from renewable energies to third parties without paying electricity tax, provided that a large proportion of the electricity (> 50%) is consumed by the company itself, as well as an electricity tax exemption for the balanced use of biomass, synthetic gas or hydrogen, if these are fed into existing natural gas pipelines, for example.

- **Determination of electricity used for charging electric vehicles:** To maintain a common treatment in the taxation of electricity for charging electric vehicles in the EU it will be required that the revised energy taxation directive also contains common provisions about the authorisation for users of electric vehicles, the documentation and measurement of the charging current. Without a binding common framework member states will regulate this in different diverging ways. To enable harmonised treatment within the EU member states the energy taxation directive should in general prohibit to make the use of electric vehicles obligatory from an authorisation. If member states decide to introduce separate tax rates for electric charging compared to the general use of electricity any additional administrative burden for customers to determine or measure the charging current should be avoided. The new energy taxation directive should define a common obligatory and facilitated framework by using new technologies to measure the charging current and to keep records.
- **Period for transposition into national legislation:** The adopted proposal for the revision of the energy taxation directive doesn't contain a period for the transposition of the new provisions into national taxation. It has to be taken into account, that national legislative procedures require sufficient time to revise their national taxation laws.

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If you notice any errors, omissions or ambiguities in these recommendations, please contact VDA without delay so that these errors can be rectified.

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