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NOTE

From: Presidency
To: Permanent Representatives Committee/Council
Subject: Revision of the Energy Taxation Directive
- Policy debate

In order to guide the policy debate which will take place during the Council (Economic and Financial Affairs) on 10 December 2024, the Presidency has prepared a note with a question as set out in the Annex below.

The Permanent Representatives Committee is invited to take note of the Presidency's note and the question, and to forward them to the Council for the above mentioned policy debate.

The Council (Economic and Financial Affairs) is invited to hold a policy debate based on the question prepared by the Presidency.

Revision of the Energy Taxation Directive**Presidency note****I. INTRODUCTION**

1. On 14 July 2021, the Commission submitted a proposal for a Council Directive restructuring the Union framework for the taxation of energy products and electricity (recast) ('the ETD proposal').
2. The ETD proposal is part of the Fit for 55 package and therefore contributes to implementing the ambitious EU targets of reducing emissions by at least 55 % by 2030, as compared to 1990 levels, and to achieving climate neutrality by 2050. The package consists of a set of interconnected proposals, which all drive towards the same goal of ensuring a fair, competitive and green transition by 2030 and beyond.

II. STATE OF PLAY

3. Technical analysis of the ETD proposal was launched in the Working Party on Tax Questions (Indirect Taxation - Excise Duties/Energy Taxation) (WPTQ) in September 2021. The Working Party on Tax Questions (High Level) (HLWP) discussed the file on several occasions.
4. On 17 June 2022, the Council (Ecofin) took note of the Presidency progress report on the ETD proposal. On 6 December 2022, the Council (Ecofin) held a policy debate on the ETD proposal and gave political guidance on the way forward. In general, the Ministers supported the more flexible Presidency approach and asked to find solutions to open issues. Taking into account the political guidance, technical analysis has continued.

5. Building on the progress made by the previous Presidencies, the Hungarian Presidency continued work on the revision of the ETD. The file was analysed in the meetings of the WPTQ on 12 July, 16 September, 23 October and 14 November 2024, as well as at the HLWP on 26 September and 27 November 2024.

III. WORK ON DIFFERENT ISSUES

6. The Hungarian Presidency made major adjustments in the conversion table of net calorific values (Annex II) in order to make the table as complete as possible. Furthermore, some product categories were added with the objective to help to ensure the smooth implementation of the Directive. The cases where it is necessary to deviate from the specified conversion factors were also dealt with, such as new products or products with regionally different calorific values.
7. A possibility was created for Member States to enter into bilateral agreements in order to be able to apply the control and movement provisions of Directive (EU) 2020/262 to the movement of lubricating oils in packages (up to 220 litres).
8. At the request of several delegations, the provisions on the emergency brake were modified, in order to make this tool usable in practice in case of a possible energy crisis.
9. In order to take into account the specificities of the Member States, adjustments were made in the transition periods in the case of natural gas, LPG, combined heat and power generation and households.
10. During the current semester, the questions related to component based taxation were tackled, in particular a reference to the issue of refunds was inserted. In addition, the state aid issues were discussed, involving also the Commission's DG COMP. Furthermore, the CN-codes were updated and many technical and transposition issues were clarified.

11. Taxation of aviation and waterborne navigation has been one of the most divisive issues during the negotiations. The Presidency worked hard in order to bring the differing views of the delegations closer. Since this issue played a major role in blocking the progresses on the whole proposal, and in order to facilitate the discussions, the Presidency deemed that the most viable option was to maintain the text of the currently applicable ETD on aviation and waterborne navigation, with the addition of a review clause in 2035 and, in case of aviation, the concept of 19 or less seats. Some delegations pointed out that the level of ambition decreased significantly concerning this issue. However, the Presidency would like to highlight that in light of the mandatory requirements contained in the already agreed legislation on Refuel Aviation and FuelEU Maritime, in 10 years the situation of available SAFs could be significantly different.
12. In order to structure the draft directive and to contribute to better readability of the draft directive, articles now have also titles. The recitals were adjusted further for the sake of consistency with the rest of the draft directive.
13. Delegations have repeated their well know positions on some further issues. However, the current Presidency has not reopened the discussions on these issues as the Presidency considers that these issues have been discussed thoroughly during the previous Presidencies and the text seems to reflect a fragile compromise.
14. For example some delegations would prefer to have the total exemption of agriculture and the tax reduction of commercial fuels. At the same time, the majority of delegations would prefer not to provide these exemptions or reductions in the Directive. Furthermore, the current text already contains quite a few exemptions and reductions. Although the initial goal of the revision of the Directive was to decrease the number of tax exemptions and reductions, delegations accept that different Member States have different specificities and priorities.

15. Most of the delegations are in favour of indexation, but there are some who would prefer to discuss the indexation with a lower maximum percentage or cannot support it in its current form. It should be pointed out that indexation is a fundamental question in the revision, which serves the purpose that the minimum levels of taxation do not become devalued.
16. Some delegations were not yet completely satisfied with the question of scope concerning some products, such as waste, mineralogical processes and peat. However, the Presidency understands that most of the delegations would like to have these products in scope.
17. The discussion of the December Ecofin Council was prepared at the HLWP on 27 November 2024, where the vast majority of the delegations supported the Ecofin policy debate on the Energy Taxation file. The majority of the delegations were of the view that the latest Presidency compromise reflects a delicate balance and that it could constitute an improvement compared to the currently applicable ETD. Several delegations maintained a more neutral position and some delegations indicated that they do not have a political position yet. Some delegations have expressed that there are still issues which require further discussion, for example small installations, the question of scope concerning some products, taxation of aviation and waterborne navigation (including fishing), tax exemption of agriculture and the tax reduction of commercial fuels, maximum percentage of indexation and Annex III.

IV. BENEFITS OF THE REVISED ETD

18. Even if energy products used in aviation and waterborne navigation sectors would not be taxed for a certain period, the Presidency is of the view that the revised Directive currently under negotiation still represents significant progress compared to the currently applicable Directive.

19. With the revised directive the treatment of taxation of new technologies (e.g. fuel cells, electric vehicles) and products (e.g. hydrogen) would become clear and feasible in practice. Switching from volume (rates expressed per litre) to energy content based taxation and determining rates according to the products' environmental performance would create an opportunity for green technologies to benefit from lower tax rates. According to the currently applicable Directive the new, less carbon-intensive fuels are taxed as their fossil equivalent, furthermore, biofuels are disadvantaged by the volume-based taxation, because one litre of biofuel typically has a lower energy content than one litre of the competing fossil fuel while the same tax rate applies.
20. Member States could apply component-based taxation where possible, but there would also be several alternative options for taxing certain products. The revised Directive currently under negotiation includes a number of provisions that would help the transposition and uniform treatment between Member States, for example defining uniform calorific values and categories for all possible products.
21. It is also important to highlight that the adoption of a revised ETD would create a greater degree of consistency with other EU legislation, such as RED or ETS. The possibility of tax evasion would be reduced by classifying lubricating oils in bulk as controlled product. In addition to that, the degree of harmonization would increase because several tax exemptions and reductions would be abolished (mineralogical processes, tax exemptions of households, combined heat and power generation, commercial gas oil); but it must be accepted that the Member States need time for the transition, which would be made possible by the introduction of several transitional periods.

22. In the case of the remaining tax exemptions and tax reductions, the state aid issues have been clarified. Another significant added value of the text is the indexation, which would stop the debasement of minimum levels and may result in convergence of tax rates of the Member States. For the Member States having their own currency it would be a significant relief that the value of the euro will be calculated on the average of 6 months and not just one day.
23. The revised Directive would create an opportunity to exempt electricity supplied to aircrafts stationed at the gate or at an airport in outfield position and vessels berthed at ports, which would eliminate the currently applicable authorization procedure.

V. WAY FORWARD

24. According to the Presidency's understanding, each topic of the ETD file has been discussed thoroughly in the past three years, so there are no more major issues on which delegations' preferences are unclear. In the opinion of the Presidency, we have now reached the state that the ministers set out in 2022, i.e. the proposal strikes an appropriate balance between the green goals and the consideration of the specificities of the Member States. Lately, a more horizontal question on EU competitiveness has emerged in different fora. The majority of the delegations agree that the current proposal would constitute a clear improvement compared to the currently applicable ETD.
25. At the same time, the Presidency admits that legal scrutiny and some technical adjustments of the overall text still need to be undertaken.
26. While keeping in mind both the green goals of the draft Directive and the specificities of certain Member States, but also the competitiveness of the EU, the Presidency would like to receive feedback on the balance achieved during the negotiations.

VI. QUESTION TO MINISTERS

27. In light of the above and in order to get guidance on the way forward on the ETD file, delegations are invited to address during their interventions the following question prepared by the Presidency.

In light of the ECOFIN Council's 2022 guidance, do you share the view that the current state of play of the negotiations on the Revision of the Energy Taxation Directive shows that we are in the right direction for striking a balance between the climate ambition and the specificities of the Member States, as well as the competitiveness of the EU?
