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**'I/A' ITEM NOTE**

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From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
Subject:	Revision of the Energy Taxation Directive - Progress report

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The progress report in the Annex to this note presents the Presidency's view of the state of play and progress achieved in the examination of the abovementioned proposal in the first half of 2025.

The Permanent Representatives Committee is invited to take note of the Presidency progress report set out on the Annex to this note and to forward it to the Council.

The Council (Economic and Financial Affairs) is invited to take note of the Presidency progress report set out in the Annex to this note as an 'A' item at a forthcoming meeting.

**Revision of the Energy Taxation Directive****Presidency progress report****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)<sup>1</sup> ('the ETD proposal').
2. The ETD proposal is part of the Fit for 55 package<sup>2</sup>, which is aimed at implementing the ambitious EU targets of reducing emissions by at least 55 % by 2030, as compared to 1990 levels, and 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. It covers a range of policy areas and economic sectors: climate, energy and fuels, transport, buildings, land use and forestry.
3. The ETD proposal has the following objectives:
  - (a) providing an adapted framework contributing to the achievement of the EU 2030 targets and to climate neutrality by 2050 in the context of the European Green Deal. This would involve aligning the taxation of energy products and electricity with EU energy, environment and climate policies, thus contributing to the EU's efforts to reduce emissions;
  - (b) providing a framework that preserves and improves the EU's internal market by updating the scope of taxable energy products and the structure of rates and by rationalising the use of tax exemptions and reductions by Member States; and
  - (c) preserving the capacity to generate revenue for the Member States' budgets.

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<sup>1</sup> 10872/21.

<sup>2</sup> 10849/21.

4. In the Commission's view, these objectives could be achieved by switching from taxation based on volume to taxation based on energy content, by establishing a ranking of rates based on environmental performance, and by limiting incentives for fossil fuel use. In accordance with the ranking, conventional fossil fuels, such as gas oil and petrol, would be taxed at the highest rate and electricity at the lowest.
5. The European Economic and Social Committee adopted its opinion on 20 January 2022<sup>3</sup> and the Committee of the Regions adopted its opinion on 27 April 2022<sup>4</sup>. The opinion of the European Parliament is pending.

## **II. STATE OF PLAY IN THE COUNCIL**

6. The analysis of the ETD proposal was launched within 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) has discussed the file on several occasions.
7. On 7 December 2021, the Council (ECOFIN) took note of the Presidency progress report on the Fit for 55 package proposals, which also covered the ETD proposal<sup>5</sup>. On 17 June 2022, the Council (ECOFIN) took note of the Presidency progress report on the ETD proposal<sup>6</sup>. On 6 December 2022, the Council (ECOFIN) held a policy debate on the ETD proposal<sup>7</sup> and gave political guidance on the way forward. In general, ministers supported the more flexible Presidency approach and asked for solutions to be found to outstanding issues.
8. On 10 December 2024, the Council (ECOFIN) held a policy debate on the ETD proposal<sup>8</sup> and provided political guidance.
9. Taking into account the political guidance, technical analysis has continued in Council preparatory bodies.

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<sup>3</sup> 5615/22.

<sup>4</sup> 7822/25.

<sup>5</sup> 14574/21.

<sup>6</sup> 9874/22.

<sup>7</sup> 14736/22.

<sup>8</sup> 16174/24 REV 1.

### III. PROGRESS MADE IN THE FIRST HALF OF 2025

10. Building on the progress made by the previous presidencies, the Polish Presidency continued work on the revision of the ETD. The file was analysed at meetings of the WPTQ on 30 January, 1 April and 20 May 2025.
11. During the first semester of 2025, based on discussions at the Working Party meetings, the Presidency prepared three sets of full compromise text and the most recent compromise text was submitted to the WPTQ of 20 May<sup>9</sup>. In addition, the Presidency presented its analyses of specific provisions in explanatory notes, which facilitated discussions and helped achieving progress towards solutions to the outstanding issues.
12. One of the topics discussed was how to achieve the common goal of EU industries remaining competitive in the changing global context and what the role of energy taxation could be in that. The Commission presented the energy taxation aspects of its communications ‘The Clean Industrial Deal: A joint roadmap for competitiveness and decarbonisation’<sup>10</sup>, ‘Action Plan for Affordable Energy – Unlocking the true value of our Energy Union to secure affordable, efficient and clean energy for all Europeans’<sup>11</sup>, ‘A Competitiveness Compass for the EU’<sup>12</sup> and ‘A European Steel and Metals Action Plan’<sup>13</sup>. In light of these communications, the Presidency considers that energy-intensive sectors, such as mineralogical and metallurgical processes, need more support. Therefore, according to the Presidency, allowing Member States to continue to give support in the form of an exclusion from the scope of the Directive is justified.

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<sup>9</sup> 9008/25.

<sup>10</sup> 6515/25.

<sup>11</sup> 6601/25.

<sup>12</sup> 5785/25.

<sup>13</sup> 7288/25.

13. A new feature, introduced by the ETD proposal, is the provision for the automatic indexation of minimum levels of taxation. The objective of the indexation is to avoid the erosion of the economic impact of the ETD over time. The Presidency facilitated the discussion on the arrangements of indexation, in particular the time base and indexation cap.
14. The concept of ‘single use’ and ‘different single use’ were clarified. Since these terms raised doubts regarding their interpretation and scope, the Presidency initiated a discussion aimed at clarifying their meaning. Some specific uses of energy products and electricity in certain sectors of the economy in which energy products or electricity are used, can require additional support. Therefore, Member States may apply specific reduced levels of taxation (full exemptions from excise duties or reduced tax rates) to such specific uses. Such cases were indicated in the compromise text as ‘different single use’. As a result of this discussion, it was argued that the concept of ‘different single use’ is a subset of the broader notion of “single use”. At the same time, it seemed necessary to retain the concept of ‘single use’ as it is referring to all cases of use of energy products and electricity that fall within the scope of the Directive – that is, those which do not meet the definition of dual use of energy products and electricity. The term ‘single use’ was kept in the compromise text but discussions initiated by the Presidency helped achieving progress towards clarifying this notion so that economic operators, tax administrations and citizens can better understand and interpret the text of the future Directive.

15. Delegations raised the issue of small installations which consume for own-use electricity produced by them from non-renewable energy sources that have already been taxed. The currently applicable ETD allows Member States, provided that energy inputs are taxed, to exempt the electricity output of small producers when it is for own-use. The ETD proposal has retained the general aim of the small producers' regime; however, a threshold has been introduced to define small installations. It was introduced with the aim of targeting production of electricity from renewable sources and to take into account the possibility that large-scale installations may enjoy a disproportionate tax benefit. However, this has led to limiting the possibility of exempting small installations that consume for own-use electricity they produce from non-renewable energy sources that have already been taxed. For that reason the Presidency modified the relevant provisions in the compromise text. As a result of this, Member States will be able: a) to exempt electricity production for own-use where the input energy products are not taxable energy products (wind, solar, waste, etc.). The aim here is to avoid an unnecessary output burden for non-professional or very small producers, and to incentivise the development of such installations; b) to exempt electricity produced from energy products that have already been taxed according to the Directive. This applies to cases where the electricity used in industrial processes is generated by the manufacturer for own-use, for example from natural gas.
16. After examining the requests of some delegations, the Presidency decided to exclude from the scope of the Directive all waste used for heating purposes. An additional burden in the form of excise duty could lead to an increase in the prices of services provided by companies collecting waste and its disposal. As a consequence, there could be an increase in cases of self-incineration of waste by individual entities, which, in the absence of appropriate infrastructure, may lead to greater pollution of the atmosphere with harmful gases, or to carbon leakage, due to increased waste exports to outside the EU. Retaining the exclusion of waste from the scope of the draft ETD according to the Presidency is therefore justified.

17. Some modifications were made in the compromise text with the objectives of ensuring legal certainty and aligning the future ETD with other relevant legislative acts. In particular, in the case of future amendments of Annex IX to Directive (EU) 2018/2001 (Renewable Energy Directive, RED II), the Commission is empowered to adopt delegated acts in order to amend Annex III of the future ETD in order to bring it into line with the revised version of RED II. The required changes were also made to the list of feedstock items for the production of ‘advanced biofuels, bioliquids and biogas’ (Annex III of the ETD compromise text).
18. Furthermore, in order to bring the conversion table of net calorific values (Annex II of the ETD compromise text) into line with the Combine Nomenclature (CN), the Presidency updated the descriptions contained in the ‘Product name’ column, as well as some of the CN codes.
19. In an earlier version of the compromise text it was set out that the Council may adopt implementing acts to change the category of any energy product when its category is inconsistent with its environmental performance. However, it was stressed during the discussion that, under the TFEU, the basic act cannot normally be amended by an implementing act. Changing the category of energy product could be considered an essential element of the ETD proposal. It emerged that a legally viable option would be to transform the empowerment into a review clause, and the Presidency revised the compromise text accordingly.
20. The recitals were further adjusted for the sake of consistency with the operative part of the ETD proposal.
21. Delegations have repeated their well-known positions on some other issues. However, the Presidency has not reopened the discussions on these as it considers them to have been discussed thoroughly over the previous years and the text represents a fragile compromise.

#### **IV. POSSIBLE WAY FORWARD**

22. In the view of the Presidency, the state of play of the negotiations represents a delicate balance between different views of delegations, factoring in also the aspect of competitiveness which has been recently highlighted by many delegations. All issues of the ETD proposal have been thoroughly discussed since the beginning of the negotiations and delegations' positions are in general well-known, although some of them have evolved.
23. However, further work will be necessary in order to reconcile the positions of the delegations. The Presidency also acknowledges that some technical adjustments and legal scrutiny of the compromise text are needed. The Presidency notes that delegations are committed to continuing the work on the basis of the progress made so far.

#### **V. CONCLUSION**

24. In this context, the Polish Presidency invites the Council to take note of this report, with a view to advancing negotiations, building on the progress made so far.
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