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'A' ITEM NOTE

From: General Secretariat of the Council
To: Council

Subject: Proposal for a Council Directive restructuring the Union framework for the
taxation of energy products and electricity (recast)
- Progress report

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 2022.

Following the meeting of the Permanent Representatives Committee on 8 June, the Economic and Financial Affairs Council 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.

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)¹ ('the ETD proposal').
2. The ETD proposal is part of the Fit for 55 package², 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 policy package consists of a set of interconnected proposals, which all drive towards the same goal: 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.

¹ 10872/21.

² 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 would be taxed at the lowest rate.
5. On 11 September 2019, the Commission published a report³ on the evaluation of the ETD, highlighting that the current rules do not contribute to the new regulatory framework or to the EU's strategic objectives in the area of climate and energy. On 5 December 2019, the Ecofin Council approved conclusions on the EU energy taxation framework⁴, emphasising the important role played by the harmonisation of energy taxation, through the ETD, in ensuring the proper functioning of the internal market. The Council also supported an update of the legal framework for energy taxation, contributing to the achievement of the EU's wider economic and environmental policy objectives. The conclusions called on the Commission to ensure that the proposals were fully assessed in terms of their economic, social and environmental costs and benefits. When preparing the ETD proposal, the Commission carried out a public consultation⁵.

³ 12153/19.

⁴ 14608/19.

⁵ https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12227-Revision-of-the-Energy-Tax-Directive-/public-consultation_en

II. STATE OF PLAY

6. On 20-21 July 2021, at the informal meeting of the Working Party on Tax Questions (High Level Group) (HLG), which discussed ‘Future challenges in the area of taxation’, delegations were able to share their preliminary views on the role of taxation in the green transition at the working session on ‘Taxation aspects of the Green Deal’. On 22 July 2021, the Commission presented the ETD proposal to Coreper (Part 2).
7. Technical discussions in the Working Party on Tax Questions (Indirect Taxation – Excise Duties/Energy Taxation) (WPTQ) were launched on 9 September 2021. At that meeting, the Commission presented both the proposal and the impact assessment.
8. At the HLG meeting on 23 September 2021, the Slovenian Presidency updated delegations on the state of play, the work planned and its intention to make as much progress as possible on the file during its term of office.
9. The technical examination of the proposal in the WPTQ continued on 6 October, 20 October, 15 November and 24 November 2021 with an article-by-article analysis. The first round of analysis of all the articles was completed on 24 November 2021.
10. Quite a few questions were asked about various aspects of the proposal, such as the switch from taxation based on volume to taxation based on energy content, the introduction of a ranking of rates based on environmental performance, the taxation of new products, the indexation of minimum rates, the treatment of the aviation and maritime sectors, and the links with other files in the Fit for 55 package.

11. At the HLWP on 25 November 2021, the Slovenian Presidency informed delegations about the results of the work and the progress on the dossier, including in the context of the Fit for 55 package. On 7 December 2021, the Ecofin Council took note, as an ‘A’ item, of the Presidency progress report on the Fit for 55 package proposals dealt with by the Ecofin Council, including the ETD proposal⁶.
12. At the meeting of the Working Party on Tax Questions (High Level) on 6 January 2022, the French Presidency confirmed its commitment to take this important file forward with the aim of ensuring a common understanding of the technical provisions of the draft text and its effects on the taxation of energy products and electricity at the end of the transition period. The meetings of the Working Party on Tax Questions under the French Presidency were held on 10 January, 11 February, 10 March, 8 April, 2 May and 1 June 2022.
13. The analysis covered the whole proposal and the work was divided into the following four blocks of topics: (1) scope of taxable products and approach to energy content, structure of rates at the end of the transitional period and renewable energy; (2) minimum levels of taxation and content of tax categories, structure of rates in 2023, transitional periods and indexation; (3) State aid and transport; (4) industry, agriculture, fisheries and households. On the basis of detailed exchanges in the Working Party, the French Presidency submitted partial compromise texts on the first two blocks to delegations.

⁶ 14574/21.

14. The French Presidency submitted background notes as well as technical notes on specific topics to the Working Party. These notes were circulated to delegates ahead of the meetings in order to: present the Presidency's analysis of the provisions; facilitate discussions; and gather the positions of the Member States serving as a basis for drafting compromises on the first two blocks. The exchanges allowed delegations to better understand the provisions of the proposal and how it will work in practice. Tangible progress has also been made in understanding the issues at stake in the proposal, in particular as regards the scope of taxable products, the link with horizontal excise rules (Council Directive 2020/262 of 19 December 2019), the content of the tax categories of products and its updating, the practical consequences of the energy content approach, in particular on the taxation of mixed products, the scope of the transition period and the indexation of minimum rates. The French Presidency has sought to ensure greater consistency - in particular as regards definitions and thresholds - with the other energy-related directives, in particular the following directives currently under revision: Directive (EU) 2018/2001 of 11 December 2018 on the promotion of the use of energy from renewable sources and Directive 2012/27/EU of 25 October 2012 on energy efficiency. The link between the Directive and the State aid rules has also been further discussed with the Commission departments.
15. On the basis of the discussions held so far on the ETD proposal, the French Presidency finds that, while not contesting the objectives of the ETD proposal, Member States do attach importance to preserving the EU's competitiveness and to examining the effects of the future ETD on households, on certain sectors of activity and on the economy as a whole.
16. The French Presidency welcomes the interest expressed by the Member States in deepening the discussion on this proposal. The complexity of the proposal will require further technical discussions in the Working Party on Tax Questions since delegations will need to work on possible compromise solutions on a wide range of issues.

17. To this end, it will be useful to further develop the following aspects:
- (a) the definition of the tax categories and minimum levels of taxation, including the possibility of applying a derogation regime to certain products (for instance gas and LPG);
 - (b) the implementation of the new rules on classification between categories of products and ‘equal level of taxation’ within the same category of products, including the proposed abolition of the possibility of differentiating the tax rate on diesel for commercial use in road transport;
 - (c) the pace of the implementation of the new rules and of the abolition of the exemptions for the aviation and maritime sectors, including fisheries, and the minimum rates applicable to those sectors;
 - (d) the treatment of mixed products, in particular the measurement of their energy content;
 - (e) the interaction between State aid rules (in particular the General Block Exemption Regulation currently being revised) and the future ETD;
 - (f) links with the other files in the Fit for 55 package, in particular the Renewable Energy Directive and the Energy Efficiency Directive, including as a reference for the identification of energy products within the scope of the ETD;
 - (g) the extent of inclusion of new products in the scope of the Directive.
18. The French Presidency notes that Member States are committed to continue the work on the basis of the Commission proposal. However, at this stage, it is too early to make definitive remarks on the content of a possible compromise agreement with a view to a Council general approach on this legislative file.
19. The European Economic and Social Committee adopted its opinion on 20 January 2022⁷ and the Committee of the Regions adopted its opinion on 27 April 2022⁸. The opinion of the European Parliament is pending.

⁷ 5615/22.

⁸ <https://webapi2016.COR.europa.eu/v1/documents/cor-2021-04801-00-00-ac-tra-en.docx/content>

III. CONCLUSION

20. In this context, the French Presidency invites the Council to take note of this report, with a view to making further progress on this file and building on the progress made so far.
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