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Committee on Transport and Tourism

2011/0092(CNS)

26.9.2011

DRAFT OPINION

of the Committee on Transport and Tourism

for the Committee on Economic and Monetary Affairs

on the proposal for a Council Directive amending Directive 2003/96/EC restructuring Community framework for the taxation of energy products and electricity
(COM(2011)0169 – C7-0105/2011 – 2011/0092(CNS))

Rapporteur: Sabine Wils

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SHORT JUSTIFICATION

I. The Commission's proposal

The current Energy Taxation Directive (ETD) sets minimum rates for the taxation of energy products used as motor fuel, as heating fuels, and for electricity. The minimum rates generally apply to the volume of the energy product consumed. The Commission feels that this system has a number of negative effects such as creating incentives contrary to the EU's climate change goals or distorting the internal market.

With its proposal for a revision, the Commission aims to remedy these negative effects. One of its main ideas is a new structure of energy taxation by splitting the minimum rate of taxation of energy products into two parts:

- 1) One based on the CO₂ emissions of the energy product. CO₂ taxation would be zero for all sources of energy that currently are, or will in the future, be recognised as CO₂-free.
- 2) The other based on the energy content per Gigajoule, regardless of the energy product, to provide an incentive to save energy.

At the same time, the proposal aims to make the ETD more consistent with other EU policies such as the EU Emission Trading Scheme (ETS). In this regard the Commission proposes not to apply the CO₂ related taxation to installations subject to the ETS, i.e. including aviation.

Several further aspects of the proposal touch upon transport policy such as:

- The abolition of the possibility for Member States to differentiate between the tax treatment of commercial and non-commercial use of gas oil as motor fuel;
- The removal of the possibility to apply a lower rate of general energy consumption taxation for taxis, since it is no longer compatible with the objective of policies promoting alternative fuels, alternative energy carriers and the use of cleaner vehicles in urban transport;
- The updating of the definitions of standard tanks and special containers.

Finally, the Commission proposes to exempt shore-side electricity provided to ships while at berth in a port and to maintain existing obligations for Member States to exempt from taxation fuel used for the purpose of air and maritime navigation. Regarding inland waterways, the Commission proposes to maintain the current rules which allow Member States to apply total or partial exemptions or reductions in the level of taxation.

II. Position of the Rapporteur

The Rapporteur welcomes and supports the Commission's proposal. Its underlying principle is sound as it provides for a consistent treatment of all energy sources in a technologically neutral approach. At the same time it provides incentives for less polluting energy products and for the shift towards a low carbon economy.

In one aspect the Rapporteur would have wished that the Commission had gone further. This concerns the existing obligations (!) for Member States to exempt fuel used for the purpose of air and maritime navigation from taxation ("the exemption") as laid down in the ETD currently in force. The present situation can be summarised as follows: the ETD allows

Member States to tax domestic sea and air traffic, it obliges them to conclude bilateral agreements if they wish to tax intra-EU sea and air traffic (which no Member State has done) and it prohibits the taxation of international air traffic.

The rapporteur proposes to abolish this obligation for Member States for exemption and to provide them the right to decide whether they wish or wish not to tax. This solution would be more in line with the principle of subsidiarity than the current prohibition. As can be seen from the introduction of air ticket taxes by some Member States, there seems to be a certain willingness to tackle the issue of aviation taxation which can also be a means to broaden the tax base. At the same time, with this solution Member States could decide on the details of their taxation so as to avoid competition problems.

Abolishing the obligation for exemption would also be a first step towards tackling the issue at the international level. The EU would have better arguments to insist on fuel taxation on intra-EU flights for future air service agreements with third countries. This would be consistent with the call of Parliament in its resolution of 7 June 2011 on international air agreements under the Treaty of Lisbon "that incentives are provided to maintain and enhance [...] environmental standards."¹

In this context it is important to note that the Chicago Convention does not contain a general prohibition to tax aviation fuel. It only forbids taxation of fuel already on board.²

The inclusion of aviation in the ETS also does not make it unnecessary to tackle the issue as the Commission proposes not to apply the CO₂ related taxation to installations subject to the ETS (see above). The competitive advantage of aviation therefore would remain as it would cover only part of the tax rate other modes have to pay.

If the long-term objective is to create a level playing field across different modes of transport, it is necessary to make a first move in this direction. The step which is proposed here is not a gigantic leap but at least a step in the right direction of a more sustainable transport system.

¹ See point 8 of the resolution.

² See Article 24 on customs duties paragraph a) http://www.icao.int/icaonet/dcs/7300_cons.pdf

AMENDMENTS

The Committee on Transport and Tourism calls on the Committee on Economic and Monetary Affairs, as the committee responsible, to incorporate the following amendments in its report:

Amendment 1

Proposal for a directive Recital 18 a (new)

Text proposed by the Commission

Amendment

(18a) This Directive is intended to facilitate the over-arching goals of the Union's energy and climate policies. The introduction of the aviation sector into the EU Emission Trading Scheme through Directive 2008/101/EC is a reflection of the ambition to reduce greenhouse gas emissions from this sector. In the event that, by 31 December 2011, no international agreement has been reached that includes international maritime emissions and contains ambitious reduction targets, the Commission should make a proposal to include such emissions within the Union's greenhouse gas reduction commitment. Taxing energy products used in aviation and maritime activities in the same manner as other energy products is essential for the energy independence of the Union and as an incentive for energy efficiency.

Or. en

Justification

The prohibition on Member States applying taxation measures to energy products used for aviation and maritime activities is not justified. In the absence of the ability to apply taxation measures on energy products used in aviation and shipping, Member States are not able to fulfil their commitments to EU energy and climate policies in a cost-efficient way

Amendment 2

Proposal for a directive

Recital 19

Text proposed by the Commission

(19) Directive 2003/96/EC obliges Member States to exempt from taxation ***fuel used for navigation in Community waters as well as*** electricity produced on board a craft, including while at berth in a port. ***Moreover, Member States may extend this favourable tax treatment to inland waterways.*** In some harbours a cleaner alternative exists with the use of shore-side electricity which, however, is taxable. ***In order to set a first incentive for the development and application of this technology,*** pending the adoption of a more comprehensive framework in the matter, Member ***State*** should exempt the use of shore-side electricity by ships while at berth in a port from energy taxation. This exemption should apply during a period long enough in order not to discourage port operators from making the necessary investments but at the same time be time-limited in such a way that its maintenance, in full or in part, is made subject to a new decision in due time.

Amendment

(19) Directive 2003/96/EC obliges Member States to exempt from taxation electricity produced on board a craft, including while at berth in a port. In some harbours a cleaner alternative exists with the use of shore-side electricity which, however, is taxable. ***In order to avoid the production of fuel-based electricity on board a craft while at berth, and the attendant local air pollution,*** pending the adoption of a more comprehensive framework in the matter, Member ***States*** should exempt the use of shore-side electricity by ships while at berth in a port from energy taxation. This exemption should apply during a period long enough in order not to discourage port operators from making the necessary investments but at the same time be time-limited in such a way that its maintenance, in full or in part, is made subject to a new decision in due time.

Or. en

Justification

In order to improve the clarity of the text this recital should deal only with shore-side electricity.

Amendment 3

Proposal for a directive

Recital 19 a (new)

Text proposed by the Commission

Amendment

(19a) In line with the Union's climate change and environmental objectives, it is

necessary to dispense with the obligation for Member States to exempt from taxation fuel used for the purpose of air and maritime navigation. Ending this obligation should help to create a level playing field for different modes of transport, broadening the tax base and complying more fully with the principle of subsidiarity. The requirement to enter into bilateral agreements with other Member States in order to be able to waive these exemptions should also be dispensed with, as it constitutes an overly cumbersome procedure. Instead, Member States should be given the possibility of taxing fuel used for the purpose of air and maritime navigation. Member States should refrain from applying such taxes in ways that conflict with international obligations until international legal barriers have been removed. Where Member States decide to tax energy products used for Union or international air or sea navigation, this should, where feasible, be done in ways that do not result in “tankering”.

Or. en

Justification

When the Council adopted the ETD all Member States, except Spain and Ireland, and the Commission issued a statement that “as a matter of principle, and in the interests of a consistent tax system, commercial aircraft fuel should be taxed on the same basis as any other fuel.” The amendment would bring EU legislation in line with the EU’s effort to get rid of international rules that prohibit Member States from applying the same tax rules for all transport fuels.

It should be noted that international legal agreements to which the EU has acceded are in any case binding on the EU and Member States.

Amendment 4

Proposal for a directive

Recital 28

Text proposed by the Commission

(28) Every five years and for the first time by the end of 2015, the Commission should report to the Council on the application of this Directive, examining in particular the minimum level of CO₂-related taxation in the light of the evolution of the market price in the EU of the emission allowances, the impact of innovation and technological developments and the justification for the tax exemptions and reductions laid down in this Directive, ***including for fuel used for the purpose of air and maritime navigation***. The list of sectors or sub-sectors deemed to be exposed to a significant risk of carbon leakage shall be the subject of regular review, in particular taking into account the availability of emerging evidence

Amendment

(28) Every five years and for the first time by the end of 2015, the Commission should report to the Council on the application of this Directive, examining in particular the minimum level of CO₂-related taxation in the light of the evolution of the market price in the EU of the emission allowances, the impact of innovation and technological developments and the justification for the tax exemptions and reductions laid down in this Directive. ***This report should include an overview of existing taxation provisions contained in bilateral air service agreements***. The list of sectors or sub-sectors deemed to be exposed to a significant risk of carbon leakage shall be the subject of regular review, in particular taking into account the availability of emerging evidence.

Or. en

Justification

By proposing to report about the justifications for the tax exemptions for fuel used for the purpose of air and maritime navigation, the Commission implicitly admits that these are problematic but postpones the issue. Addressing them now is, however, important if the EU wants to be credible about its objective to transform the EU transport system into a sustainable system. "Getting prices right" is a necessary precondition towards the achievement of this objective. Postponing the discussion cannot be the solution.

Amendment 5

Proposal for a directive

Article 1 – point 11 – point (a) – point iia (new)

Directive 2003/96/EC

Article 14 – paragraph 1 points (b) and (c)

Text proposed by the Commission

Amendment

(iia) points (b) and (c) are deleted.

Justification

This amendment deletes the obligation for Member States to exempt from taxation fuel used for the purpose of air and maritime navigation. Deleting this obligation has a huge potential for reducing greenhouse gas emissions. A study prepared for the Commission found that "harmonising fuel duties and VAT across the modes (at the level of those currently paid by private road transport) delivered GHG savings of over 10% compared to business as usual". (Towards the decarbonisation of EU's transport sector by 2050, p. xi)

Amendment 6**Proposal for a directive****Article 1 – point 11 – point aa (new)**

Directive 2003/96/EC

Article 14 – paragraph 2

*Text proposed by the Commission**Amendment****(aa) Paragraph 2 is deleted.***

Or. en

Justification

This amendment deletes the cumbersome procedure according to which Member States need to conclude bilateral agreements with other Member States if they wish to waive the exemptions from taxation of fuel used for the purpose of air and maritime navigation for intra-EU transport. No Member State has ever used this procedure. It seems much more appropriate to give Member States in this Directive the possibility to tax fuel.

Amendment 7**Proposal for a directive****Article 1 – point 13 – point a – point (-i)(new)**

Directive 2003/96/EC

Article 15 – paragraph 1 – point fa (new)

*Text proposed by the Commission**Amendment*

"(fa) energy products supplied for use as fuel for sea or air navigation other than in private pleasure craft or for private pleasure flying."

Or. en

Justification

This amendment subjects tax on energy products supplied for non-private pleasure use as fuel for sea or air navigation to complete subsidiarity. Member States may choose to respect the minimum levels in ANNEX I, apply lower levels, or to apply no taxation to energy products.

Amendment 8

Proposal for a directive

Article 1 – point 13 – point b a (new)

Directive 2003/96/EC

Article 15 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

(ba) The following paragraph is inserted:

"3a. For the purposes of this Directive:

(a) 'private pleasure flying' shall mean the use of an aircraft by its owner or the natural or legal person who enjoys its use either through hire or through any other means, for other than commercial purposes and in particular other than for the carriage of passengers or goods or for the supply of services for consideration or for the purposes of public authorities.

(b) 'private pleasure craft' shall mean any craft used by its owner or the natural or legal person who enjoys its use either through hire or through any other means, for other than commercial purposes and in particular other than for the carriage of passengers or goods or for the supply of services for consideration or for the purposes of public authorities."

Or. en

Justification

Those definitions, copied from the present Article 14.1(b) and (c), are needed as a consequence of the amendment on Article 15(fa).

Amendment 9

Proposal for a directive

Article 1 – point 17 – c a (new)

Directive 2003/96/EC

Article 21 – paragraph 6 a (new)

Text proposed by the Commission

Amendment

(ca) The following paragraph is inserted:

"6a. No later than six months after the adoption of this Directive, the Commission shall report to the European Parliament and to the Council on the pre-conditions for some or all Member States to switch from a system in which transport fuels are taxed according to the fuel used instead of the fuel tanked. The report shall be accompanied, where appropriate, by proposals for amendments of Union legislation and shall include comprehensive assessments of the impact on fiscal subsidiarity, greenhouse gas emissions, energy independence and economic growth."

Or. en

Justification

"Tank tourism" in road haulage and "tankering" within aviation distort the market and strongly limit the ability for the Member States to set their own fuel taxes. As long as the taxation is based on fuel tanked and only minimum tax levels can be set under unanimity in the Council, it is hard to see how the "tank tourism" problem can be resolved. In parallel it seems difficult for Member States to fuel tax-wise treat aviation in the same way as other modes as long as only fuel tanked can be taxed.

An interesting option would be to tax fuel used instead of tax filled, e.g. in line with the North American IFTA model.

Amendment 10

Proposal for a directive

Article 1 – point 21

Directive 2003/96/EC

Article 29

Text proposed by the Commission

"Article 29

Every five years and for the first time by the end of 2015, the Commission shall submit to the Council a report on the application of this Directive and, where appropriate, a proposal for its modification. The report by the Commission shall, inter alia, examine the minimum level of CO₂-related taxation, the impact of innovation and technological developments, in particular as regards energy efficiency, the use of electricity in transport and the justification for the exemptions and reductions, ***including for fuel used for the purpose of air and maritime navigation,*** laid down in this Directive. The report shall 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. In any event, the list of sectors or sub-sectors deemed to be exposed to a significant risk of carbon leakage for the purposes of Article 14a of this Directive shall be the subject of regular review, in particular taking into account the availability of emerging evidence."

Amendment

"Article 29

Every five years and for the first time by the end of 2015, the Commission shall submit to the Council a report on the application of this Directive and, where appropriate, a proposal for its modification. The report by the Commission shall, inter alia, examine the minimum level of CO₂-related taxation, the impact of innovation and technological developments, in particular as regards energy efficiency, the use of electricity in transport and the justification for the exemptions and reductions laid down in this Directive. ***The report shall also include an overview of existing taxation provisions contained in bilateral air service agreements.*** The report shall 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. In any event, the list of sectors or sub-sectors deemed to be exposed to a significant risk of carbon leakage for the purposes of Article 14a of this Directive shall be the subject of regular review, in particular taking into account the availability of emerging evidence."

Or. en

Justification

By proposing to report about the justifications for the tax exemptions for fuel used for the purpose of air and maritime navigation, the Commission implicitly admits that these are problematic but postpones the issue. Addressing them now is, however, important if the EU wants to be credible about its objective to transform the EU transport system into a sustainable system. "Getting prices right" is a necessary precondition towards the achievement of this objective. Postponing the discussion cannot be the solution.