BRIEFING

EU Legislation in Progress

European Parliament

Revision of the Energy Taxation Directive: Fit for 55 package

OVERVIEW

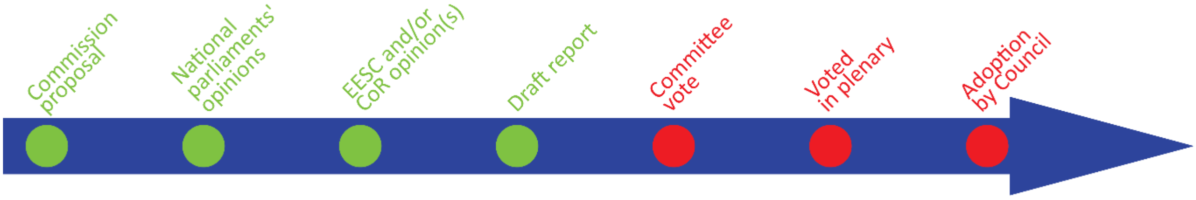
The Energy Taxation Directive (ETD) lays down EU-wide minimum excise duty rates on motor/heating fuels and electricity. Member States are free to set their own tax rates as long as the ETD's minimum rates are respected. The directive also provides a number of (mandatory) tax exemptions on certain energy products, such as maritime and aviation fuels.

Since its enforcement in 2003, the directive has remained unchanged, despite the EU's world-leading climate ambitions and many advances in clean energy technology. In order to modernise the energy taxation framework and to bring it in line with the EU's climate and energy policy, the Commission tabled a proposal for a revision of the ETD in July 2021, as part of the 'fit for 55' legislative package. The proposal was designed to bring the directive up to date with modern technology, remove a number of tax exemptions that are considered outdated and ensure that Member States' excise duties on energy promote low or zero carbon alternatives.

Unlike the rest of the 'Fit for 55' package, the proposal is subject to the special legislative procedure, requiring unanimous support in the Council, following consultation of the European Parliament, the European Economic and Social Committee and the Committee of the Regions.

As of June 2024, work in both the Council and the European Parliament remains ongoing.

Proposal for a Council Directive restructuring the Union framework for the taxation of energy products and electricity (recast)		
Committee responsible:	Economic and Monetary Affairs (ECON)	COM(2021)0563 14.7.2021
Rapporteur:	Johan Van Overtveldt (ECR, Belgium)	2021/0213(CNS)
Shadow rapporteurs:	Fulvio Martusciello (EPP, Italy) Joachim Schuster (S&D, Germany) Ondřej Kovařík (Renew, Czechia) Claude Gruffat (Greens/EFA, France) Gunnar Beck (ID, Germany) José Gusmão (The Left, Portugal)	Consultation procedure (CNS) – Parliament adopts a non-binding opinion only
Next steps expected:	Committee vote	



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Author: Pieter Baert
Members' Research Service

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Introduction

The Energy Taxation Directive (2003/96/EC), also known as the ETD, sets EU-wide minimum taxation levels on energy products – when used as motor or heating fuel – and electricity. The directive's primary aim is to ensure that the EU's single market for energy can operate smoothly, and to prevent distortions of trade and competition that can result from differences in national tax systems. The ETD already dates back to 2003, and – after a proposal for a revision was withdrawn in 2015 – has remained unchanged ever since.

In the context of the European Green Deal, a new proposal for a revision of the ETD was tabled as part of the EU's 'Fit for 55' legislative package in July 2021.[1]

With the proposal for a more modern ETD, the Commission aims to:

- improve and simplify the energy tax rates and taxable base;
- avoid inconsistencies and overlaps with other EU regulations;
- rationalise the use of tax exemptions and reductions by Member States; and
- preserve the capacity to generate revenues for the budgets of the Member States.

As of June 2024, the proposal for a revision of the ETD remains the only legislative file of the 'Fit for 55' package that has not yet been adopted.

Energy Taxation Directive – Main concepts

Minimum tax levels

The 2003 directive's key part is a system of EU-wide minimum levels of excise duty on energy products used as **motor fuel** (petrol, gas oil, kerosene, LPG and natural gas) or **heating fuel** (gas oil, heavy fuel oil, kerosene, LPG, natural gas, coal and coke) and **electricity** to ensure a proper functioning of the EU single market.[2] With EU-wide minimum rates in place, excessive energy tax competition between Member States could be avoided.[3]

The ETD's minimum rates are laid down in **Annex I** of the directive, where they are listed by category and energy type. For example, the current EU minimum levels of taxation on some motor fuels are listed in Table 1 below.

Table 1 – Minimum levels of taxation applicable to motor fuels (non-exhaustive)

Motor fuel	Rate	Minimum rate*
Leaded petrol	In € per 1000 l	€421
Unleaded petrol	In € per 1000 l	€359
Gas oil	In € per 1000 l	€330
Kerosene	In € per 1000 l	€330
Liquefied petroleum gas (LPG)	In € per 1000 kg	€125

Source: Annex I of Council Directive 2003/96/EC. *Applicable minimum rate as of 1 January 2010.

Countries are free to set tax rates on fuels and electricity as they see fit, as long as the ETD's minimum levels are respected. As Table 1 shows, the ETD works (mostly) on the basis of **volume** (with rates expressed per amount of litre/kilogram consumed), thereby encouraging energy savings. In addition, Member States are offered a number of possibilities to further differentiate the rates, if they so wish.

Member States may differentiate tax rates:

- based on **consumption level** (often with lower rates for energy-intensive businesses);
- between business and non-business use;
- based on **product quality** (sulphur content, energy content, CO2 emissions, etc.);
- in the case of **certain uses** (local public passenger transport including taxis, waste collection, armed forces and public administration, disabled people, ambulances).

As a general rule, energy products that are not listed in the ETD are taxed at the equivalent motor fuel or energy product rates.

Scope and exemptions

In terms of scope, the ETD applies exclusively to energy products used for purposes such as motor fuels or heating fuels and electricity. Other uses are not covered (for instance, the dual use of energy, electricity when it accounts for more than 50 % of the cost of a product, mineralogical processes, and electricity used for chemical reduction and in electrolytic and metallurgical processes).

The ETD's taxation framework also includes a range of **mandatory/optional exemptions or reduced tax rates** for certain energy uses (see Table 2). Member States may grant such tax exemptions/reduced taxation either directly, by means of a differentiated rate, or by refunding all or part of the amount of taxation.

Table 2 – Mandatory and optional tax exemptions/reduced taxation (non-exhaustive)

Mandatory exemptions	Optional exemptions/reduced taxation below the minimum rates
Energy products and electricity used to produce electricity	Electricity from renewables
Aviation fuels	Combined heat and power generation (CHP)
Sea navigation fuels	Carriage of goods and passengers by rail, metro, tram and trolley bus
	Electricity, natural gas, coal and solid fuels used by households and/or by organisations recognised as charitable by the Member State
	Biofuels and products produced from biomass
	Natural gas and LPG used as propellants
	Energy-intensive businesses involved in efforts to reduce consumption and increase energy efficiency

The ETD's mandatory exemption for aviation fuel applies exclusively to intra-EU flights. Member States may apply energy taxes on domestic flights or on bilateral flights, depending upon the agreement of the other Member State.[4]

Member States may request further (temporary) exemptions (or rate reductions) for specific policy considerations (for example, concerning a remote geographical area). In case of such a request, the Commission examines it – taking into account, inter alia, the proper functioning of the internal market, the need to ensure fair competition, and EU health, environment, energy and transport policies – and tables a proposal, when justified, subject to Council approval.

Through the ETD's combination of minimum rates and a range of optional tax exemptions, Member States can maintain a certain degree of **flexibility** when adapting the directive to their national circumstances, and pursue, if they wish, other policy objectives (e.g. environmental, transport) or compensate for local disadvantages. Such flexibility was likely imperative to attain the necessary political support from Member States, as the adoption of the ETD, like any other file in the policy area of taxation, required the unanimous support of the Council.

Existing situation

Some 20 years since the ETD's implementation, European energy and climate policies have changed tremendously. To illustrate, when the ETD entered into force,[5]

- the EU aimed to reduce its greenhouse gas emissions by (only) 8 % by 2008–2012 from 1990 levels. Today, it has already reduced emissions by more than 30 %, and is striving towards a reduction of -55 % by 2030.
- the share of renewables in the EU's overall energy mix was less than 10 %. It has more than doubled since then. The consumption of biofuels has increased 10-fold.
- the EU's primary energy consumption was nearly 1 500 million tons of oil equivalent (Mtoe). Thanks to energy efficiency measures, energy consumption decreased to 1 257 Mtoe in 2022, a reduction of 15 %.

Today, the EU is a world leader in decarbonisation, aiming to reach net-zero emissions by 2050, and has adopted a broad range of measures as part of the European Green Deal to reduce emissions in industry, agriculture, road/maritime/aviation transport, heating, etc.

Despite progress in green technologies and the evolution of EU climate policy, the ETD has remained unchanged since 2003. In a 2019 evaluation of the ETD, the Commission concluded the following:

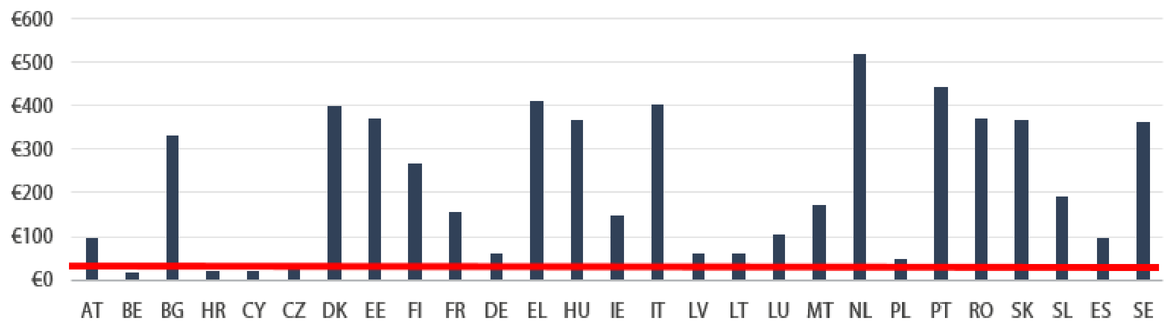
> 'the ETD initially made an overall positive contribution towards its main objective of ensuring the proper functioning of the internal market (...). However, (...) the ETD in its present form no longer makes the same positive contribution (...) [and] there are some aspects of it which now lack relevance and coherence. As a result the overall EU added value of the ETD has eroded significantly over time.'

The Commission identified in its evaluation a wide range of issues with the current ETD. This analysis looks at some of the key concerns.

Diminished impact of minimum rates

When the ETD entered into force, there was hope that the directive's minimum rates would 'enable existing differences in the national levels of taxation to be reduced'.[6] However, significant variations in applied excise duty rates persist among Member States. Some countries have tax levels that far exceed the specified minima, while others remain very close to the minimum rate (see Figure 1).

Figure 1 – National excise duty rates on gas oil (heating fuels) for non-business use per 1 000 litres in January 2024 (ETD minimum rate = €21 per 1 000 litres)



Data source: Taxes in Europe database as reported by Member States.

Particularly in the area of transport fuels, tax rates have gradually diverged more and more among Member States, creating local distortions of the single market and possibly leading to 'tank tourism', the Commission believes.[7]

In addition, there is **no automatic indexation** mechanism in the ETD, with the minimum rates not having been adjusted to inflation for two decades. This has gradually weakened the rates' price-signalling role to consumers and eroded their efficacy over time, the Commission argues. For instance, in 2023 the €0.5 ETD minimum rate per 1 MwH electricity accounted for less than 1 % of the EU average price paid by industrial consumers.

Moreover, the directive does not require Member States to follow any 'internal logic' behind the minimum rates. For example, as long as the minimum rates are respected, Member States are free to set higher tax rates for low-carbon fuels than high-carbon fuels.

Decreased relevance and coherence

In terms of the directive's relevance and coherence with other EU policy tools, the Commission concluded the ETD was 'no longer in line with the current use of energy products, particularly as it covers a continuously shrinking share of the EU's energy mix', with 'overlaps, gaps and inconsistencies that hamper the achievement of the EU objectives in the field of energy, environment, climate change and transport'.

It is unsurprising that a 20-year-old framework fails to mention many of the advanced green energy alternatives available today, overlooking key areas such as energy efficiency, innovation in clean technologies and renewables and electricity market developments. At the time, renewables were generally regarded as 'niche alternatives without major market significance'. This makes for a rather limited and unclear treatment of non-fossil fuels in the ETD. For instance, the directive does not mention hydrogen, biogas or biomethane, and while it refers to biofuels, there is no differentiation between the various categories of biofuels. This knowledge gap in the ETD has led to varying national interpretations and classifications by Member States, leading to **legal uncertainty** for companies, and, in the worst case, may even have slowed investment in sustainable energy.

Furthermore, the ETD sometimes contains a (unintended) **tax bias against low energy content fuels**. This is due to its volume-based tax system and the obligation for Member States to tax products for which there is no specific rate of taxation in the ETD at the same rate as its equivalent motor fuel or energy product. This creates a particular disadvantage for biofuels. As biofuels have a lower energy content, a biofuel automatically faces a higher tax burden compared to its equivalent fossil fuel (as more litres of biofuel are needed to achieve the same outcome).

The series of mandatory/optional tax exemptions in the ETD for various energy uses may also be disconnected from or in contradiction to other EU initiatives, such as the EU Emission Trading System (ETS) or the Renewable Energy Directive (REDII). In particular, the exemptions for **fuels used in air and maritime navigation** in Community Waters are explicitly viewed as potentially contradicting the EU's goals in the decarbonisation of transport. The Commission argues this exemption may also cause an uneven playing-field vis-à-vis road and rail transport, and may weaken the aviation and maritime sectors' incentive to reduce emissions.[8]

Russian invasion of Ukraine and EU energy taxation

On 24 February 2022, Russia launched a brutal, illegal invasion of Ukraine. The EU acted unanimously in condemning the invasion and its immense human cost, imposing sanctions on Russia and supporting Ukraine with both military and humanitarian supplies. As part of the widespread sanctions against Russia, the EU agreed a ban on the import of Russian coal and oil (with exceptions) as well as a price cap on Russian crude oil and petroleum products.

One of the most immediate effects for Europe's energy market was the disruption of natural gas supplies, as Ukraine serves as a transit country for Russian gas exports to Europe. Concerns over potential supply interruptions led to increased volatility in gas prices and heightened uncertainty about energy security. Consequently, annual energy inflation levels surged, impacting food prices and various other commodities, with both businesses and households facing higher costs. In October 2022, EU inflation reached an unprecedented peak of 11.5 %.

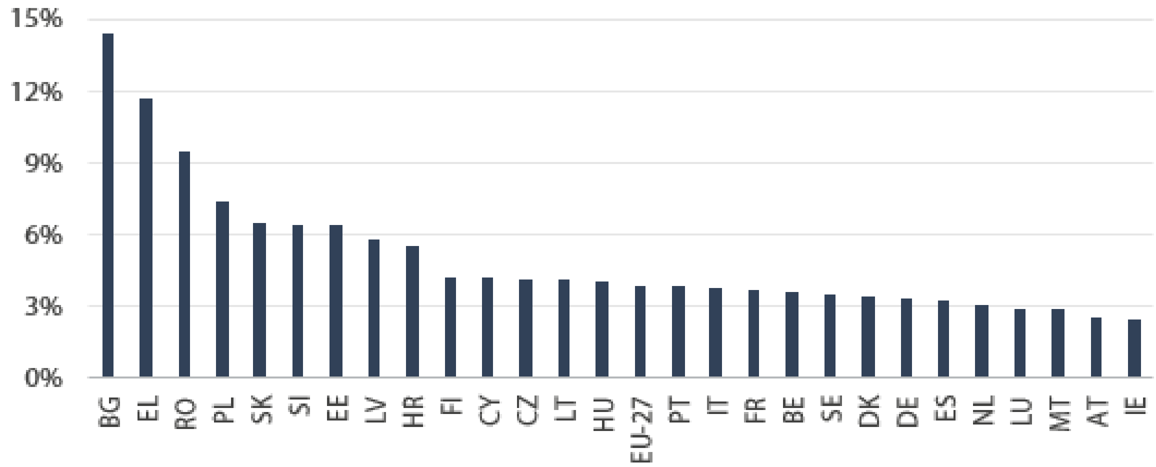
A range of (fiscal) measures were taken at both EU and national level to support businesses and families amidst the energy crisis. According to an analysis by think-tank Bruegel, EU Member States earmarked more than €500 billion to support consumers during the energy cost crisis, with virtually all Member States (temporarily) lowering either VAT, excise duties or other taxes, particularly on electricity and gas. In April 2022, European Commissioner for Economy and Taxation Paolo Gentiloni sent a letter to Member States outlining the available VAT and ETD measures to help mitigate energy prices. While tax cuts are quick and easy to implement, he expressed caution about assuming that tax reductions would lead automatically to equivalent decreases in energy prices, referring to the particularly 'bad track record' VAT cuts have in this area. The OECD raised similar concerns about these measures, arguing tax cuts were less likely to be passed on to the customer in times of constrained supply and would weaken price signals to consumers. Rather, it advised countries to opt for targeted income support, while accelerating the rollout of alternative energy supplies.

Trade-off between revenue generation and climate objectives

When the ETD entered into force, energy taxes accounted for 5.2 % of total tax revenue in the EU. By 2021, this share had decreased slightly to 4.4 %. Following the Russian invasion of Ukraine, Member States significantly cut energy taxes, resulting in the lowest-ever recorded share of energy tax revenue (3.9 %). Nevertheless, energy taxes remain a non-negligible part of many Member States' budgets, with particularly high shares in Bulgaria and Greece, where they account for more than a tenth of total tax revenue.

However, as textbook economics predicts, any tax with a behavioural component will ultimately have to face a trade-off between revenue generation and the achievement of behavioural objectives. Applied to energy taxes, all other things being equal, the taxation of carbon-based fuel use should, over time, lower their consumption, reducing carbon emissions, but also leading to a tax revenue shortfall. While reducing greenhouse gas emissions and preserving tax revenue are not 'contradictory objectives', the Commission expressed its concern about any potential long-term future revenue erosion for Member States' budgets without a revised ETD. Similar concerns had already been expressed by national tax authorities, for example in France (where excise duties on fuel are expected to drop by more than €10 billion by 2030) and Ireland (where excise duties are projected to drop to nearly zero by 2040).

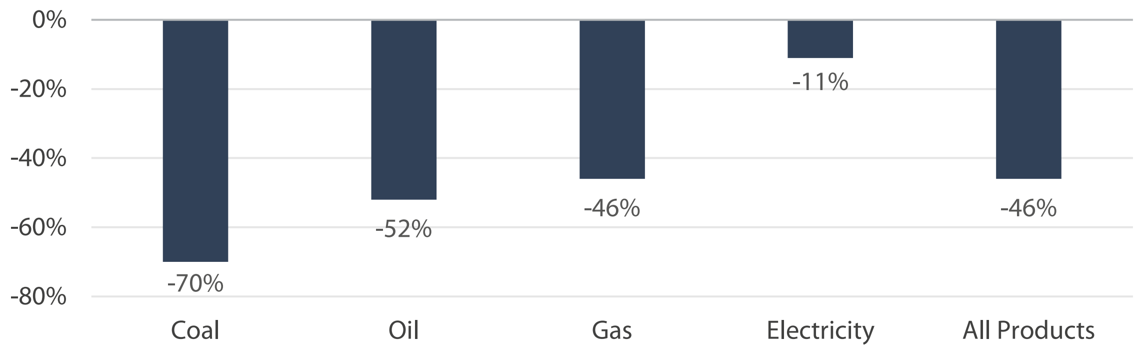
Figure 2 – Energy tax revenue as a % of total tax revenue, 2022



Data source: European Commission, based on Eurostat data.

According to one analysis by the Commission, energy tax revenues in the EU are expected to drop substantially by 2035 (–46 %), due to a combination of increased energy efficiency and a shift towards green energy in Europe (see Figure 3). Revenue from the taxation of energy products would drop across various categories, although the move towards electrification should limit somewhat the revenue fall in electricity taxes.[9] This analysis looks exclusively at changes in energy tax revenue, but the decarbonisation of society would, of course, also affect other tax categories. In particular, the switch to electric vehicles (EVs) would likely visibly impact revenue collection in VAT and car registration tax, as countries typically apply lower rates to the purchase of EVs to accelerate their (rising) uptake across Europe. This analysis also predates the accelerated deployment of renewable energy that the EU managed to achieve as part of the REPowerEU initiative, in order to reduce dependency on Russian energy imports as fast as possible.

Figure 3 – Comparison of change in energy tax revenue for the EU-27 in 2035 relative to 2015, baseline scenario (fixed nominal tax rates), % change



Source: European Commission, Impact assessment accompanying the proposal for a Council Directive restructuring the Union framework for the taxation of energy products and electricity. Data source: JRC-GEM-E3.

In addition, the past 20 years have allowed academics to gain a greater understanding of the role of energy taxes, and how they affect (low-income) households and (energy-intensive) businesses. In general, there is wide support among economists for the use of tax instruments based on the 'user pays' or 'polluter pays' principles. This support is often linked to the 'double dividend' hypothesis, which suggests that such taxes can yield both environmental and economic benefits, as part of a 'green fiscal reform'.[10]

However, public acceptance of energy taxes remains contentious and uncertain. Famously, the Yellow Vests movement in France (*Gilets Jaunes*) erupted in 2018 following a planned increase in excise duties on motor/heating petrol products. The Yellow Vests were not an 'isolated case', however, and energy taxes have led to protests and uprisings across the world in recent years. Public acceptance of energy tax increases may depend on a range of factors (e.g. trust in politicians, attitudes towards environmental policy, the perceived fairness of the tax increase, etc.).[11]

Preparation of the proposal

The Commission had already proposed to revise the ETD in 2011, aiming to align the directive with the EU's strengthened climate ambitions. Crucially, the proposal moved away from a volume-based tax system towards taxation based on fuels' energy content and CO_2 emissions. Member States failed to reach consensus, and the Commission withdrew the proposal in 2015.

The discussions on a revision of the ETD were revived in the Council, in the context of the European Green Deal, when Member States called on the Commission to explore options for an update to the energy taxation framework.

In August 2017, the Commission launched an evaluation of the ETD, including a roadmap, followed by a first public consultation in the first half of 2018. The Commission published its consultation report in August 2018 and received contributions from 20 Member States. In addition, an external study on technical and legal aspects of the ETD was prepared by Deloitte and published in September 2019. In the European Parliament, which had supported the 2011 revision, MEPs called on the Commission to table a redesigned ETD (European Parliament resolution of July 2020).

With a view to tabling a proposal to revise the ETD, the Commission carried out a new public consultation in the summer of 2020 targeting all stakeholders and all sectors of activity. Most of the stakeholders expressed a favourable opinion on an ETD revision, and agreed that tax bias in favour of fossil fuels should be adjusted. A summary report was published in December 2020.

The changes the proposal would bring

On 14 July 2021, the Commission tabled a proposal for the revision of the ETD, alongside an impact assessment.[12] The proposal aims to align the taxation of energy products with the EU's energy and climate objectives by promoting clean and modern technologies and removing outdated exemptions and reduced rates that are considered to be incoherent with EU policy. It introduces a new structure of tax rates based on the energy content and environmental performance of fuels and electricity and broadens the taxable base.

In contrast to other files from the Fit for 55 package, where the ordinary legislative procedure applies, unanimity in the Council is required for the adoption of the ETD proposal. The European Parliament, the European Economic and Social Committee and the Committee of the Regions adopt (non-binding) opinions.

Minimum rates – Energy content

The Commission proposes a fundamental change in the foundation of the minimum taxation framework itself, moving away from the current volume-based system (with minimum rates expressed per 1 000 litre, per 1 000 kg, etc.) towards a framework based on **energy content** (expressed as € per Gigajoule (GJ)). With this change, the ETD would remove the tax bias against fuels with lower energy content (such as biofuels) that is inherent to the volume-based taxation of the current ETD.

The new minimum rates are again collected in a revised Annex I to the directive (see, for example, the motor fuels overview in Table 3). The Annex is modernised and lists several (new) green fuels that are missing from the current directive, such as biogas and various categories of biofuels. To ensure a simplified ordering, the energy products would be grouped into four categories, with the same minimum rate applying to each energy product within that category.

The four categories would be:

- I: Traditional fossil fuels (petrol, gas oil) and non-sustainable biofuels – €10.75 per GJ.
- II: Natural gas and LPG (i.e. fossil fuels that are considered less harmful than the previous category, and which still may have some potential to contribute to emission reduction in the short and medium term) – €7.17 per GJ.
- III: Sustainable but not advanced biofuels – €5.38 per GJ.
- IV: Electricity, advanced biofuels, bioliquids, biogases and renewable hydrogen – €0.15 per GJ. This category will always benefit from the lowest rates.

This ordering takes into account fuels' energy content as well as their environmental performance.[13]

To ensure a balance between mitigating social costs, achieving climate objectives and preserving Member States' tax revenue, the minimum rates of some energy products, including natural gas, would rise gradually, through a **fixed one-tenth annual increase** in the rates over a **10-year transitional period** (2023-2033), effectively reducing the number of energy categories from four to three at the end of the transitional period (see third column of Table 3).[14]

In addition, to ensure that the price-signalling role of the ETD's minimum rates are not gradually eroded by inflation, the rates would undergo an **annual inflation adjustment**, based on Eurostat consumer prices figures (Article 5(2)). These adjustments to the minimum rates would be made through an annual Commission delegated act.

Table 3 – Minimum levels of taxation applicable to motor fuels and electricity, in € per Gigajoule (non-exhaustive)

Energy product	Start of transitional period (1 January 2023)*	Final rate at end of transitional period (1 January 2033)*
Petrol, gas oil and non-sustainable biofuels	€10.75	€10.75
LPG and natural gas	€7.17	€10.75
Sustainable food and feed crop biofuels and sustainable food and feed crop biogas	€5.38	€10.75
Sustainable biofuels and sustainable biogas	€5.38	€5.38
Low-carbon fuels	€0.15**	€5.38
Electricity, advanced sustainable biofuels, biogas and renewable fuels of non-biological origin	€0.15	€0.15

Source: Annex I of the proposal for a Council Directive on restructuring the Union framework for the taxation of energy products and electricity (recast). *Before inflation adjustment. **For low-carbon fuels, the minimum level set for 2023 would apply until 1 January 2033 (Article 7).

Furthermore, a number of restrictions would be added to the minimum rates framework:

- The option to have divergent rates for business and non-business use would be removed.
- Next to respecting the minimum rates themselves, Member States would need to follow the **'ranking'** behind them. In other words, the fuels most harmful to the environment would always need to be taxed the most (Article 5(1)). This should allow Member States to steer consumers towards green(er) alternatives.

Exemptions and modernisation

To bring the ETD up to date with modern technologies, and to ensure standardised fiscal treatment and legal clarity, Article 2 adds a number of definitions on synthetic fuels, bio-methane, e-fuels, alternative fuels and second and third-generation biofuels, that are taken from other EU regulations, such as REDII.

The proposal would remove the mandatory tax exemption for **maritime and aviation fuels** (Article 14 and 15) as of 2023. For business and pleasure flights, certain sustainable aviation fuels (SAFs) and electricity used in intra-EU aviation would benefit from a minimum rate of €0 for 10 years (until 2033). Regular fossil fuel-based jet fuel, such as kerosene, would have a gradual one-tenth increase in the minimum rate from €0 at the start of the transition period to €10.75 in 2033. An exemption would remain in place for intra-EU cargo-only flights.

Regarding intra-EU maritime navigation, including fishing, private vessels and freight transport, a minimum rate of €0 would apply for 10 years to certain sustainable fuels and electricity. Other fuels would be taxed according to the minimum rates set out in Table B of Annex I. Electricity produced on board a vessel would be exempted from taxation.

To maintain a degree of **flexibility**, a number of provisions are added which would provide Member States with the option of applying a dedicated approach to certain energy products, households or business sectors.

For example, Member States may exempt or apply reduced taxation to energy products when they are used for 'pilot projects for the technological development of more environmentally-friendly products or in relation to fuels from renewable sources'. Exemptions may also be provided to **electricity from renewable sources**, such as solar, wind, wave and tidal, electricity from geothermal origin, electricity generated from sustainable biomass, electricity produced from highly-efficient combined heat and power generation, and a range of green fuels (Article 16).

As increases in (heating) fuel taxes may impact low-income households in particular, a provision is added to mitigate social and economic costs (Article 17(c)). Heating fuels and electricity used by **'vulnerable households'** may be exempted from taxation for a period of 10 years. For the purposes of this provision, 'vulnerable households' are households who are below the 'at risk of poverty' threshold, defined as 60 % of the national median equivalised disposable income. Member States may also apply reduced rates to heating fuels and electricity, while respecting the minimum rates, when used by other households. However, in that case, the minimum rates would start from zero and increase by one tenth of the final minimum rates in each year during the transition period.

Article 18 would allow Member States to apply reduced rates, while respecting the minimum rates, to energy products used for heating purposes and electricity when they are consumed by **energy-intensive businesses**. An 'energy-intensive business' would be defined as a company where either the purchases of energy products and electricity amount to at least 3.0 % of the production value or the national energy tax payable amounts to at least 0.5 % of the added value. Other business entities may also be granted reduced rates on the condition that such rate reductions are necessary for the 'achievement of environmental protection objectives and improvements in energy efficiency'.

If needed, Member States may request further exemptions for specific policy considerations (for reasons of protection of the environment and human health). In case of such a request, the Commission will examine it and may table a proposal to the Council (Article 20).

The impact on Member States will depend on various factors, such as i) the current level of national rates, ii) the national use of exemptions and reductions, iii) the energy mix of the economy, and iv) the sectoral impact of the proposed options.

Advisory committees

The European Economic and Social Committee (EESC) adopted its opinion in January 2022 (Joint rapporteurs: Stefan Back, Employers – Group I and Philippe Charry, Workers – Group II). While the EESC welcomed the modernisation and greening of the energy taxation framework, it expressed its concern about potential negative social effects, due to the increased minimum tax levels.

The European Committee of the Regions (CoR) welcomed the Commission's initiative, but suggested exploring how the ETD could have a more regional focus, to allow regional or local exemptions in special circumstances such as poverty risk for the most affected households.

National parliaments

National parliaments were able to submit reasoned opinions on grounds of subsidiarity until November 2021.

The Czech Senate sent a reasoned opinion considering that the revision of ETD did not comply with the principle of subsidiarity on several counts. For instance, Member States would not be allowed to set different tax rates for energy products in the same category; the mechanism of automatic indexation of tax levels infringes the Member States' tax powers.

Stakeholder views[15]

After the Commission proposal was published, there was a feedback period from 15 July 2021 until 18 November 2021. There were 202 instances of feedback received.

The European Confederation of Fuel Distribution (ECFD) mentioned the fact that there were as many tax regimes and exemptions in the EU as Member States and the unfair competition this situation created led to the well-established practice of 'fuel tourism' in cross-border areas. The Transport & Environment organisation (T&E) noted that this time the EU could not afford to withdraw the proposal as it finally updated an outdated tax framework.

The European Association for Storage of Energy (EASE) made recommendations on the classification and definition of the renewable and low-carbon gases and suggested the need to introduce additional multi-sectoral elements in the ETD to further support energy efficiency and decarbonisation goals. According to the European Biodiesel Board (EBB), incentives for using all sustainable biofuels, such as crop-based biodiesel, biodiesel from wastes and residues, and advanced biodiesel, should be taken into consideration for tax purposes.

Legislative process

The Commission tabled the proposal for a revision of the energy taxation directive in July 2021, alongside an impact assessment, as part of the Fit for 55 package. The proposal falls under the special legislative procedure, requiring unanimous support in the Council, following consultation of the European Parliament (2021/0213(CNS)).

In Parliament, the proposal was assigned to the Economic and Monetary Affairs Committee (ECON), with Johan van Overtveldt (ECR, Belgium) as rapporteur.[16] The rapporteur published a first draft of the (non-binding) report in February 2022. 'Rising energy prices and inflation' combined with 'broader geopolitical and military developments' made the timing of the ETD challenging, the rapporteur acknowledged. Nevertheless, he expressed broad support for the proposed change from volume to energy content and the broadening of the taxable base (e.g. the inclusion of aviation and maritime fuels). However, the rapporteur favoured a more 'technology neutral' approach in the ETD and argued that energy products for a certain use be subject to the same tax rate independently of their environmental performance. Amendments to the draft report were filed in April 2022, but a vote in the ECON committee did not take place as negotiators could not come to an agreement. Therefore, the file will need to be followed up by the new Parliament.

In the Council, examination of the proposal is continuing in the Working Party on Tax Questions (Indirect Taxation). Since the launch of the proposal in June 2021, the Council has regularly provided updates on the negotiations (December 2021, June 2022, and June 2023).

In June 2024, the Council took stock again of the state-of-play of the file. The Belgian presidency of the Council put forward several compromise texts during the first half of 2024. These compromise texts contained prolonged transition periods and the possibility for Member States to provide total or partial exemptions for certain sectors and services. However, the Belgian presidency concluded that countries' positions remained divergent, requiring further work to reach a balanced agreement.

ENDNOTES

1 The 'fit for 55' legislative package's overarching goal is reducing the EU's net greenhouse gas emissions by at least 55 % by 2030, compared to 1990 levels. By 2022, the EU had managed to reduce its emission levels by -31 %.

2 The ETD did not introduce a 'new tax', but rather replaced the Mineral Oils Directive, where a similar system of minimum rates was used.

3 EU border regions in particular saw individuals and companies actively relocating, (partly) driven by tax motivations.

4 To read more about the taxation of the aviation sector in the EU, see the study by CE Delft (2019) carried out for the European Commission: 'Taxes in the Field of Aviation and their impact'.

5 Data based on Eurostat: Statistics for the European Green Deal.

6 See Recital (5).

7 Consumers deliberately crossing a Member State's borders to refuel their vehicle to benefit from a lower fuel duty rate.

8 Other than for private pleasure purposes. Emissions by international aviation in the EU rose by 55 % between 2000 and 2019. Source: EU Environmental Agency.

9 The ETD does not oblige Member States to use the revenue raised by excise duties on fuels and electricity to support climate-related projects. This is in contrast to the EU Emission Trading System (ETS), where Member States should use at least 50 % of auctioning revenues for climate and energy-related purposes.

10 The double-dividend hypothesis holds that 'environmental taxes can both reduce pollution (the first dividend) and reduce the overall economic costs associated with the tax system by using the revenue generated to displace other more distortionary taxes that slow economic growth at the same time (the second dividend)'. Source: EU Environmental Agency.

11 To read more about public acceptance of environmental taxes, see, for example: E. Cornago, How to decarbonise EU road transport without summoning the gilets jaunes, Centre for European Reform, 2021; J. Anne-Braun and T. Guesdon., 'La fiscalité sur l'énergie peut-elle devenir acceptable? ', *Revue de l'OFCE*, Presses de Sciences-Po, Vol. 0(1), 2022, pp. 55-85; I. Muhammad et al., 'Empirical Research of Public Acceptance on Environmental Tax: A Systematic Literature Review', *Environments 2021*, Vol.8, p. 109.

12 The EPRS published an implementation appraisal for the revision of the ETD in May 2021.

13 For more information on the ordering of energy products, see the Commission's impact assessment (pp. 29-39).

14 The use of a transition period in the ETD is not entirely new. The current directive also worked on the basis of a transitional period for minimum rates in the case of some fuels.

15 This section aims to provide a flavour of the debate and is not intended to be an exhaustive account of all different views on the proposal. Additional information can be found in related publications listed under 'European Parliament supporting analysis'.

16 Additional opinions were adopted by the Committees on Transport and Tourism, Agriculture and Rural Development, Fisheries and Industry, Research and Energy.

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eprs@ep.europa.eu (contact)

www.eprs.ep.parl.union.eu (intranet)

www.europarl.europa.eu/thinktank (internet)

http://epthinktank.eu (blog)

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