



EUROPEAN PARLIAMENT

2009 - 2014

Committee on Agriculture and Rural Development

2011/0092(CNS)

21.12.2011

OPINION

of the Committee on Agriculture and Rural Development

for the Committee on Economic and Monetary Affairs

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

Rapporteur: Sergio Gutiérrez Prieto

PA_Legam

SHORT JUSTIFICATION

The proposal under consideration which will amend the Directive on the restructuring of the Community framework for the taxation of energy products and electricity (DTE) will have a considerable impact on the primary sector.

It will change the taxation regime for the energy used in agriculture. Although the Member States will still be able to apply tax exemptions (including the implementation of a level of taxation down to zero) and reductions as under the current directive, that possibility will relate solely to the energy component and to compliance with energy efficiency requirements (Article 15.3). Allowing the possibility of applying reductions in the rates of taxation on, for example, gas oil for agricultural use in the current context of falling agricultural incomes and increases in fixed production costs (of which energy costs can account for up to 30% owing to the rise in oil prices and hence in such costs) is good news in terms of European farms' viability, as no alternatives exist to the gas oil used in agricultural machinery. Nevertheless, if those tax concessions are to be linked to energy efficiency policies in order to reduce these fixed costs, they must be sufficiently flexible and incorporated into state strategies designed in conjunction with the agriculture sector and forming part of a sufficiently long cycle in order not to further burden European farmers with additional charges that would undermine their economic viability at a time when they are already hampered by the requirements of the cross-cutting aspects of the common agricultural policy.

The proposal for the amendment of Directive 2003/96 introduces a tax credit as regards CO₂ for certain sectors considered to be liable to a risk of carbon leakage within the meaning of Article 10a(13) of Directive 2003/87, with agriculture not numbering among those sectors. The risk of carbon leakage in agriculture was recognised in the Commission communication 'Roadmap for a low-carbon economy by 2050', and the Commission must therefore be urged to amend Directive 2003/87 in parallel with Directive 2003/96 (DTE), within six months of the entry into force of the DTE, to include agriculture among those sectors eligible for this tax concession in order to ensure that, as the Commission acknowledges in paragraph 3.2 of its communication on this proposal, all the sectors or subsectors subject to carbon leakage receive the same tax treatment in the DTE.

The proposal for the amendment of the DTE improves the tax treatment of biomass when the energy capacity of the biomass is less than its volume, thus ending the tax discrimination to which it was subject in comparison with fossil fuels. This presents the opportunity to call for biomass to be awarded a more meaningful role in the energy mix of the Member States, not only as it is not a fossil fuel, but also because its production acts as a carbon sink. Also from a taxation standpoint, though departing from the scope of the DTE, the vastly differing VAT rates which Member States (and especially bordering States) apply to biomass need to be harmonised in order to avoid 'frontier effects' in the development of biomass between different regions and different Member States.

Finally, your rapporteur calls for the European Parliament to be included among the institutions which must be kept informed on the implementation of the DTE by the European Commission in the five years following the entry into force of that directive and welcomes the establishing of a transitional period up to 2023 for the full implementation of the changes

made to the current directive.

AMENDMENTS

The Committee on Agriculture and Rural Development calls on the Committee on Legal Affairs, as the committee responsible, to incorporate the following amendments in its report:

Amendment 1

Proposal for a directive Recital 5

Text proposed by the Commission

(5) Therefore, provision should be made for energy taxation to consist of two components, CO₂-related taxation and general energy consumption taxation. In order for energy taxation to adapt to the operation of the Union scheme under Directive 2003/87/EC Member States should be required to explicitly distinguish between those two components. This would also allow distinct treatment of fuels that are biomass or made from biomass.

Amendment

(5) Therefore, provision should be made for energy taxation to consist of two components, CO₂-related taxation and general energy consumption taxation. In order for energy taxation to adapt to the operation of the Union scheme under Directive 2003/87/EC Member States should be required to explicitly distinguish between those two components. This would also allow distinct treatment of fuels that are biomass or made from biomass ***in view of the advantages they offer as a source of renewable energy that is cheap and almost greenhouse-gas neutral.***

Amendment 2

Proposal for a directive Recital 20

Text proposed by the Commission

(20) Article 15(3) of Directive 2003/96/EC allows Member States to apply to agricultural, horticultural and piscicultural works as well as to forestry not only the provisions generally applicable to business uses but also a level of taxation down to zero. **An** examination of that option has revealed that as far as general energy consumption taxation is concerned its

Amendment

(20) Article 15(3) of Directive 2003/96/EC allows Member States to apply to agricultural, horticultural and piscicultural works as well as to forestry not only the provisions generally applicable to business uses but also a level of taxation down to zero, ***with the goal of ensuring the economic viability of these sectors which are already being hampered by***

maintenance would be contrary to the Union's wider policy objectives unless it is linked to a counterpart ensuring advances in the field of energy efficiency. As regards **CO₂** related taxation the treatment of the sectors concerned should ***be aligned to the rules applying to industrial*** sectors.

demanding social, plant health and environmental requirements that are not sufficiently compensated for by the market. Despite this, an examination of that option has revealed that as far as general energy consumption taxation is concerned its maintenance would be contrary to the Union's wider policy objectives unless it is linked to a counterpart ensuring advances in the field of energy efficiency. ***Such advances in energy efficiency should form part of a sufficiently long cycle and be subject to public planning and monitoring by public bodies. Member States should provide technical guidance to the operators in these sectors if additional energy efficiency requirements related to reduced tax rates are applied.*** As regards **CO₂** related taxation, the treatment of the sectors concerned should ***take into account the specific carbon capture and storage capacities and the risk of carbon leakage for each of the sectors and sub-sectors concerned, as well as the possible impact on their productivity and viability. The sectors producing biomass with high carbon sequestration potential should be exempted. It is essential that in Regions with an exceptional capacity to produce energy from renewable sources, energy independence of their agricultural and breeding livestock activities are encouraged.***

Amendment 3

Proposal for a directive Recital 21 a (new)

Text proposed by the Commission

Amendment

(21a) The biomass sector is a strategic sector, both for the composition of future Member State energy mixes, and for the shaping of strategies for developing high

added-value biomass products for a low carbon economy, owing to the fact that biomass production acts as a carbon sink. Member States should therefore avoid applying excessively divergent rates of taxation, including in the case of VAT, in order to avert the risk of a ‘frontier effect’ arising between Member States.

Amendment 4

Proposal for a directive Recital 25 a (new)

Text proposed by the Commission

Amendment

(25a) It should be laid down that Member States ought to develop forms of bioenergy on the basis of society’s economic needs and its interests. Member States should be encouraged to grant favourable tax treatment to the consumption of second generation biofuels. The Commission and Member States should give top priority to research into second generation agrofuels in order to improve their efficiency and actual cost, as well as substantially increasing research and development funding; potential land use change and habitat conversion should be taken into account.

Amendment 5

Proposal for a directive Recital 28

Text proposed by the Commission

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

(28) Every *three* years and for the first time by the end of 2015, the Commission should report to *the European Parliament and* the Council on the application of this

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.

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 6

Proposal for a directive

Article 1 – point 1

Directive 2003/96/EG

Article 1 – paragraph 2 – subparagraph 5 a (new)

Text proposed by the Commission

Amendment

The definition of biomass used in this Directive does not prejudice the use of a different definition in national legislation, for purposes other than those set out in this Directive.

Amendment 7

Proposal for a directive

Article 1 – point 2 – point a – point ii

Directive 2003/96/EG

Article 2 – paragraph 1 – point i

Text proposed by the Commission

Amendment

i) falling within CN codes 2207, 2208 90 91 and 2208 90 99 if these are intended for use as heating fuel or motor fuel ***and are denatured in accordance with Article 27(1)(a) and (b) of Directive 92/83/EC;***

i) falling within CN codes 2207, 2208 90 91 and 2208 90 99 if these are intended for use as heating fuel or motor fuel;

Justification

The proposed restriction of the definition on denatured ethyl alcohol in Article 2 (i) is not compatible with the practice in the market and the definition of bioethanol according to the legislation in member states, for example in Sweden, Austria and Germany.

Amendment 8

Proposal for a directive

Article 1 – point 13 – letter b

Directive 2003/96/EG

Article 15 – paragraph 3

Text proposed by the Commission

‘3. Member States may apply a level of general energy consumption taxation down to zero on the consumption of energy products and electricity used for agricultural, horticultural, aquacultural works and in forestry. **The** beneficiaries shall **be subject to arrangements** that must lead to increased energy efficiency broadly equivalent to those that would have been achieved if the standard Union minimum rates had been observed.’

Amendment

‘3. Member States may apply a level of general energy consumption taxation down to zero on the consumption of energy products and electricity used for agricultural, horticultural, aquacultural works and in forestry. **Member States and** beneficiaries shall **develop targeted strategies** that must lead to increased energy efficiency broadly equivalent to those that would have been achieved if the standard Union minimum rates had been observed.’

Justification

It is important that the energy efficiency efforts demanded in return for more favourable tax treatment be coordinated by the Member States in the form of targeted strategies and in cooperation with the sector, and that sufficient time be allowed to enable a degree of flexibility and facilitate sufficient investment to produce the genuine energy savings that could not be generated without public-sector support and through annual investment.

Amendment 9

Proposal for a directive

Article 1 – point 13 – letter ba (new)

Directive 2003/96/EG

Article 15 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. Member States shall provide comprehensive guidance to beneficiaries, including small and medium sized farms, concerning the application of energy efficiency requirements associated with reduced tax rates.

Amendment 10

Proposal for a directive

Article 1 – point 13 – point 1 – point a – point i

Directive 2003/96/EG

Article 16 – paragraph 1 – subparagraph 1 – introductory part

Text proposed by the Commission

Amendment

Until 31 December 2023, Member States may, ***without prejudice to paragraph 5 of this Article***, apply an exemption or a reduced rate of ***general*** energy consumption ***taxation under fiscal control*** on the taxable products referred to in Article 2 ***of this Directive*** where ***such products*** are made up of, or contain, one or more of the following products ***and where, as far as biofuels and bioliquids defined in Article 2(h) and (i) of Directive 2009/28/EC are concerned, these products comply with the sustainability criteria laid down in Article 17 of that Directive:***

1. Member States may, ***under fiscal control***, apply an exemption or a reduced rate of energy consumption ***tax*** on the taxable products referred to in Article 2 where ***they*** are made up of, or contain, one or more of the following products:

Justification

The aim is to reinstate the spirit of Article 16 of Directive 2003/96/EC. Biofuels will make a significant contribution to the EU's efforts to achieve its climate and energy objectives. Member States must be allowed to place fuels containing biofuels on the market. Taxation is an important lever when new types of fuels are first placed on the market.

Amendment 11

Proposal for a directive

Article 1 – point 14

Directive 2003/96/EG

Article 18 – paragraph 3

Text proposed by the Commission

3. Portugal may apply levels of general energy consumption taxation on energy products and electricity consumed in the Autonomous Regions of the Azores and Madeira lower than the minimum levels of taxation laid down in this Directive in order to compensate for the transport costs incurred as a result of the insular and dispersed nature of these regions.

Amendment

3. ***Spain and*** Portugal may apply levels of general energy consumption taxation on energy products and electricity consumed, ***respectively, in the Autonomous Communities of the Canary Islands and Balearic Islands and*** the Autonomous Regions of the Azores and Madeira lower than the minimum levels of taxation laid down in this Directive in order to compensate for the transport costs incurred as a result of the insular and dispersed nature of these regions.

Amendment 12

Proposal for a directive

Article 1 – point 21

Directive 2003/96/EG

Article 29 – paragraph 1

Text proposed by the Commission

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.

Amendment

Every ***three*** years and for the first time by the end of 2015, the Commission shall submit to ***the European Parliament and*** the Council a report on the application of this Directive and, where appropriate, a proposal for its modification.

Amendment 13

Proposal for a directive

Article 1 – point 21

Directive 2003/96/EG

Article 29 – paragraph 3

Text proposed by the Commission

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

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, ***the first of which shall be produced within six months of the entry into force of this Directive***, in particular taking into account the availability of emerging evidence."

PROCEDURE

Title	Amendment of Council Directive 2003/96/EC restructuring the Community framework for the taxation of energy products and electricity						
References	COM(2011)0169 – C7-0105/2011 – 2011/0092(CNS)						
Committee responsible Date announced in plenary	ECON 10.5.2011						
Opinion by Date announced in plenary	AGRI 9.6.2011						
Rapporteur(s) Date appointed	Sergio Gutiérrez Prieto 24.5.2011						
Discussed in committee	22.11.2011						
Date adopted	20.12.2011						
Result of final vote	<table> <tr> <td>+: </td><td>30</td></tr> <tr> <td>–: </td><td>3</td></tr> <tr> <td>0: </td><td>1</td></tr> </table>	+:	30	–:	3	0:	1
+:	30						
–:	3						
0:	1						
Members present for the final vote	John Stuart Agnew, Richard Ashworth, Liam Aylward, Luis Manuel Capoulas Santos, Michel Dantin, Paolo De Castro, Albert Deß, Herbert Dorfmann, Iratxe García Pérez, Sergio Gutiérrez Prieto, Martin Häusling, Esther Herranz García, Peter Jahr, Elisabeth Jeggle, Elisabeth Köstinger, Agnès Le Brun, George Lyon, Gabriel Mato Adrover, Mairead McGuinness, Mariya Nedelcheva, James Nicholson, Wojciech Michał Olejniczak, Georgios Papastamkos, Marit Paulsen, Britta Reimers, Ulrike Rodust, Giancarlo Scottà, Czesław Adam Siekierski, Sergio Paolo Francesco Silvestris, Marc Tarabella, Janusz Wojciechowski						
Substitute(s) present for the final vote	Spyros Danellis, Marian Harkin, Christa Kläß, Giovanni La Via, Astrid Lulling, Milan Zver						