

Evaluation of the EU framework for taxation of energy products & electricity

A Eurelectric response paper

Eurelectric represents the interests of the electricity industry in Europe. Our work covers all major issues affecting our sector. Our members represent the electricity industry in over 30 European countries.

We cover the entire industry from electricity generation and markets to distribution networks and customer issues. We also have affiliates active on several other continents and business associates from a wide variety of sectors with a direct interest in the electricity industry.

We stand for

The vision of the European power sector is to enable and sustain:

- A vibrant competitive European economy, reliably powered by clean, carbon-neutral energy
- A smart, energy efficient and truly sustainable society for all citizens of Europe

We are committed to lead a cost-effective energy transition by:

investing in clean power generation and transition-enabling solutions, to reduce emissions and actively pursue efforts to become carbon-neutral well before mid-century, taking into account different starting points and commercial availability of key transition technologies;

transforming the energy system to make it more responsive, resilient and efficient. This includes increased use of renewable energy, digitalisation, demand side response and reinforcement of grids so they can function as platforms and enablers for customers, cities and communities;

accelerating the energy transition in other economic sectors by offering competitive electricity as a transformation tool for transport, heating and industry;

embedding sustainability in all parts of our value chain and take measures to support the transformation of existing assets towards a zero carbon society;

innovating to discover the cutting-edge business models and develop the breakthrough technologies that are indispensable to allow our industry to lead this transition.

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KEY MESSAGES:

- Eurelectric welcomes this European Commission's initiative and in particular the involvement of stakeholders in the process of restructuring the Community framework for the taxation of energy products and electricity.
- The Energy Taxation Directive should ultimately contribute to the smooth functioning of the EU internal energy market. Besides asymmetric taxation already implemented in each Member State, we think that setting minimum limits on the taxation of energy products contributes to hampering market efficiency and to harming the objective of level playing field in the energy sector.
- The ETD should aim at minimising the level of taxes applied to electricity, as it endangers electrification as a fundamental tool for decarbonisation, by artificially increasing the electricity prices and making other forms of energy more competitive.
- Eurelectric welcomes the idea to align the taxation of energy products and electricity in the EU with the EU's energy and climate policy objectives. These objectives must be set by using the most cost effective instruments and by ensuring their mutual coherence.
- In order to avoid double taxation of storage, the ETD recast should explicitly state that electricity storage is enhancing the flexibility of the system but cannot be considered as end-consumption.
- Energy prices should allow EU businesses to be competitive in international markets. Targeted measures (e.g. reforming taxes and levies) should be introduced in order to address the energy-price differential with major competitors and to ensure energy security.
- ETD should not only focus on the consumption by end-users of energy products, but should also take into account other fiscal and parafiscal charges that also have an impact on the whole energy value chain (eg. Social tariffs financed by taxes on generation asset).
- Significant side-effect created by the ETD should also be addressed, such as the tax collecting role that energy companies are often assuming for Member-States and the financial responsibility they are therefore endorsing in case of arrears. The revision of the ETD should explicitly strengthen protection for collecting entities.

Fields marked with * are mandatory.

CURRENT APPLICATION OF THE ENERGY TAXATION DIRECTIVE

Relevance of the objectives of the Energy Taxation Directive

In your view, to what extent do the following objectives of the Energy Taxation Directive meet the needs of stakeholders in your field of interest?

	To a large extent	To a rather large extent	To a limited extent	Not at all	N/A
*Creating a common energy market to ensure the smooth functioning of the internal market			✓		
*Protecting the environment and achieving international commitments in that regard			✓		
*Safeguarding and improving the competitiveness of EU companies			✓		

Comment:

Eurelectric welcomes the European Commission (EC) initiative and in particular the involvement of stakeholders in the process of restructuring the Community framework for the taxation of energy products and electricity. This will provide insights that should allow the adoption of a more efficient and fair taxation framework.

We would like to draw attention to the following points:

- The Energy Taxation Directive (ETD) should contribute to the smooth functioning of the EU internal energy market and allow tax equity between Member States through the convergence of fiscal rules and procedures
 - The impact of taxes over the energy sector is an obstacle to the creation of an internal energy market
 - ✓ The restructuring of the ETD should take as its starting point a case-by-case analysis of the (multiple) taxation applied to the energy sector by Member States
 - ✓ The ETD should aim for minimising the level of taxes applied to electricity, as it endangers electrification as a fundamental tool for decarbonisation, by artificially increasing the electricity prices and making other forms of energy more competitive. To this aim, upper level of taxes should be at the minimum value possible.
 - A balanced tax approach concerning the energy sector vis-à-vis other sectors (namely public transport sector) should be guaranteed
- There is a need for coordination and integrated analysis between ETD and ETS in order to have a harmonised and holistic framework.
- The ETD recast should ensure, safeguard and improve the competitiveness of EU companies. Setting minimum limits on the taxation of energy products, besides asymmetric taxation already implemented in each member states, contributes to hampering market efficiency and to harming the objective of level playing field in the energy sector.
 - It should aim at limiting Member States' temptation to solve National Budget challenges with taxes on energy

- ✓ The electricity sector constitutes an easy target for Governments to raise tax revenues (it is an essential service with low demand elasticity), to drive low carbon policies, such as RES or energy efficiency
- ✓ Today a large number of fees and subsidies are financed through the electricity bill. This represents up to 70% of the bill in some Member States
- There is a need for an in-depth and continuous monitoring of the level of taxes and levies in each Member State
 - ✓ To keep electricity affordable for household and to mitigate the impact on the competitiveness of industrial electricity consumers, Member States should limit the level of taxes on electricity in general and apply only taxes and levies that are proportionate and directly related to electricity
 - ✓ In addition to the ETD, the EC should provide recommendations to Member States on best practices, namely an efficient recycling of tax revenue collected from the energy sector in order to promote decarbonisation with positive impacts in the economy

*In your view, should the Energy Taxation Directive pursue other objectives? If so, which? Please explain:

- A common EU-framework is necessary for the smooth functioning of the EU energy market. Minimum level of taxation does not exist in many non-EU countries and the ETD should take this into account. Companies need a stable policy environment to be able to make long-term investment decisions. This is particularly relevant in the development of - and investment in - a low-carbon economy. Both the EC and Member States need to commit to a long-term policy framework with realistic objectives, and simple and clear rules to provide this stable environment. We will support the EC to ensure that the ETD remains effective and operational, without hampering competitiveness for business while meeting wider climate policy objectives.
- Every 2 years, the EC should issue a report with an integrated perspective on the application of the ETD, also reflecting other taxes and levies that focuses in the energy sector

Effectiveness and EU added value of the Energy Taxation Directive

Functioning of the internal market

The Energy Taxation Directive seeks to harmonise energy taxation by reducing energy tax competition between EU Member States. This aims at strengthening the internal market by tackling the negative effects of the relocation of energy consumption.

*The Energy Taxation Directive sets minimum levels of taxation for products used as motor or heating fuel and for electricity. Above the minima, Member States are free to set their national rates as they see fit.

In your view, are the current minimum levels of taxation set by the Directive still fit for purpose when it comes to ensuring the good functioning of the internal market?

	To a large extent
	To some extent
✓	To a limited extent
	Not at all
	N/A

*Please explain:

Eurelectric welcomes the idea to align the taxation of energy products and electricity in the EU with the EU's energy and climate policy objectives. These objectives must be set by using the most cost effective instruments and by ensuring their mutual coherence.

In your view, what are the benefits of having the minimum levels of taxation set at the EU- rather than national level? *(Select all that apply)*

	Strong benefits	Some benefits	Limited benefits	No benefits	N/A
*Limited race to the bottom in taxation rates		✓			
*Legal certainty for economic operators, particularly in cross-border situations		✓			
*Transparency of rules		✓			
*Level playing field between economic operators		✓			

Other (please explain):

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In your view, is there an impact (positive or negative) of the differentiated national rates granted by the following provisions of the Energy Taxation Directive on the level-playing field?

	Strongly positive	Positive	Negative	Strongly negative	N/A
*Differentiated national rates linked to product quality (Article 5)		✓			
*Differentiated national rates depending on quantitative consumption levels for electricity and energy products used for heating purposes (Article 5)		✓			
*Differentiated national rates for local public passenger transport (including taxis), waste collection, armed forces and public administration, disabled people, ambulances (Article 5)		✓			
*Differentiated national rates between business and non-business use for heating fuels, heating gas oil and electricity (Article 5)		✓			
*Differentiated national rates between commercial and non-commercial use of gas oil used as propellant (Article 7(2))		✓			
*Differentiated national rates for energy products and electricity used to produce electricity and electricity used to maintain the ability to produce electricity for reasons of environmental policy (Article 14(1)(a))		✓			

	Strongly positive	Positive	Negative	Strongly negative	N/A
*Differentiated national rates for energy products supplied for use as fuel for the purpose of air navigation other than in private pleasure-flying, energy products supplied for use as fuel for the purposes of navigation within Community waters other than private pleasure craft and electricity produced on board a craft (Article 14(2))		✓			

Other (please explain):

- Eurelectric would support more studies by Member States and the EC looking into the consequences of differentiated national taxation rates
- We do encourage the EC to keep the level of taxes on energy limited in order to keep energy affordable for households and to mitigate the impact on the competitiveness of the energy intensive industry

In your view, to what extent and how do the exemptions and reduced taxation levels granted by the following provisions of the Energy Taxation Directive impact the creation of a level-playing field across sectors?

	Strongly positive	Positive	Negative	Strongly negative	N/A
*Energy products and electricity used to produce electricity and electricity used to maintain the ability to produce electricity (Article 14(1)(a))		✓			
*Energy products supplied for use as fuel for the purpose of air navigation other than in private pleasure-flying (Article 14(1)(b))		✓			
*Energy products supplied for use as fuel for the purpose of navigation within Community waters (including fishing) other than private pleasure craft and electricity produced on board a craft (Article 14(1)(c))					✓
Taxable products used under fiscal control in the field of pilot projects for the technological development of more environmentally-friendly products or in relation to fuels from renewable resources (Article 15(1)(a))		✓			
*Electricity (Article 15(1)(b))		✓			
*Refund to the producer of some or all of tax paid by consumers on electricity produced from products specified in Article 15(1)(b)		✓			
*Energy products and electricity used for agricultural, horticultural or piscicultural works and in forestry (Article 15(3))					✓
*Taxable products from biomass (Article 16)		✓			

	Strongly positive	Positive	Negative	Strongly negative	N/A
*Consumption of energy products used for heating purposes, for stationary motors or for plant and machinery used in construction, civil engineering and public works and electricity in favour of energy-intensive businesses and undertakings which concluded agreements leading to the achievement of environmental protection objectives or to improvements in energy efficiency (Article 17(1)(b))		✓			
*Other					✓

Please specify:

Article 14(1)(a) also states that Member States may, for environmental policy reasons, subject the products, mentioned above, to taxation without having to respect the minimum levels of taxation established in ETD. This, even without laying down the conditions with which that derogation must comply (giving discretionary power to Member States) and has raised concerns regarding the competitiveness in an energy market that is intended to be a “single” market at EU level, impacting the following principles:

- legal certainty for economic operators
- transparency of rules, and
- fair conditions for competition between operators

In accordance with Article 16 of the Energy Taxation Directive, Member States may apply exemptions or reduced taxation rates on taxable energy products if they contain biofuels or water.

What are the impacts of these reductions, if any, on the following fields:

	Strongly positive	Positive	Negative	Strongly negative	N/A
*Tax revenues			✓		
*Transport					✓
*Agriculture					✓
*Energy		✓			
*Industry		✓			
*Environment		✓			
*Competitiveness		✓			
*Other					✓

Article 17 of the Energy Taxation Directive provides that under certain conditions, Member States can apply tax reductions in favour of energy-intensive businesses and undertakings which have concluded agreements leading to the achievement of environmental protection objectives or to improvements in energy efficiency.

What are the impacts (positive or negative) of the reductions granted by Article 17 on the following fields:

	Strongly positive	Positive	Negative	Strongly negative	N/A
*Tax revenues			✓		
*Transport					✓
*Agriculture					✓
*Energy		✓			

	Strongly positive	Positive	Negative	Strongly negative	N/A
*Industry		✓			
*Environment		✓			
*Competitiveness		✓			
*Other					✓

Please explain:

Can you name any discrepancies with other relevant EU policies in the application of the Energy Taxation Directive in terms of coverage of energy products and their use?

- New technologies should be taken into account in a revised framework, such as storage whose development will be key for the mitigation of climate change. In order to avoid any derogatory application of the ETD, it should explicitly be stated that electricity storage is enhancing the flexibility of the system but cannot be considered as end-consumption under the ETD. Otherwise this would create a double taxation issue.
- Eurelectric calls on EC to take actions to mitigate some of the impact created by the ETD. A significant side-effect which has been noted since the entry into force of the Directive is that the application of the ETD generates certain financial losses for the energy businesses.
 - E.g. energy taxes are collected by energy businesses, but are meant to be borne by end-consumers from an economic point of view. As a matter of fact, in situations where the electricity taxes invoiced to consumers are unpaid and cannot be recovered from the end-customer, the ETD should allow energy businesses to recover those taxes from Members States, a similar way as allowed under the VAT-Directive (Article 90 - 2006/112/EC on the common system of value-added tax). The revision of the ETD should therefore explicitly include this essential protection for collecting entities

Protection of the environment

The Energy Taxation Directive acknowledges that environmental protection requirements must be integrated into the definition and implementation of other EU policies such as the energy taxation framework. Indeed, energy prices are seen as a key element of the EU environmental policy.

*The Energy Taxation Directive sets different minimum levels of taxation for well-defined products used as motor or heating fuel and for electricity.

In your view, is the current categorisation set by the Directive still fit for purpose when it comes to ensuring the protection of the environment?

Biomass depending on the benefits it can have on the environment may profit from a favourable tax regime.

The 7th Environmental Action Programme constitutes the cornerstone of the EU environmental policy. It spells out three key objectives: protecting the Union's natural capital; turning the Union into a resource-efficient, competitive low-carbon economy; and safeguarding citizens from environment-related pressures and risks to health and well-being.

In your view, to what extent do the following exemptions and reduced taxation rates granted by the Energy Taxation Directive contribute to the following environmental objectives:

	To a large extent	To some extent	To a limited extent	Not at all	N/A
*Differentiated national rates for energy products and electricity used to produce electricity and electricity used to maintain the ability to produce electricity for reasons of environmental policy (Article 14(1)(a))				✓	
*Exemptions or reduced taxation rates for taxable products used under fiscal control in the field of pilot projects for the technological development of more environmentally-friendly products or in relation to fuels from renewable resources (Article 15(1)(a))	✓				
*Exemptions or reduced taxation rates for electricity produced from combined heat and power generation, provided that the combined generators are environmentally-friendly (Article 15(1)(d))	✓				
*Tax reductions on electricity where agreements are concluded with undertakings leading to the achievement of environmental protection objectives or to improvements in energy efficiency (Article 17(1)(b))	✓				
*Other					✓

Other (please specify):

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Competitiveness of EU companies

The Energy Taxation Directive aims at reducing existing disparities in energy taxation in the European Union by establishing a level playing field in the internal market. The Energy Taxation Directive should also contribute to the international competitiveness of European companies.

*In your view, to what extent does the possibility for Member States to apply optional exemptions, reduced rates and non-harmonised taxes under the Energy Taxation Directive influence the competitive position of EU businesses in the international market?

<input type="checkbox"/>	To a large extent
<input checked="" type="checkbox"/>	To some extent
<input type="checkbox"/>	To a limited extent
<input type="checkbox"/>	Not at all
<input type="checkbox"/>	N/A

*Please explain:

<p>Member States should try and limit the level of taxes on electricity in general and apply only taxes and levies that are proportionate and directly related to electricity. Furthermore we support the EC to seek consensus between Member States to ensure that any energy tax reductions allowed by the ETD is automatically considered in line with state aid rules and fall under the revised General Block Exemption Regulation. This would avoid any additional impact in terms of notification and demonstration of necessity and proportionality of the aid/tax reduction in question.</p>

*In your view, to what extent has the introduction of minimum levels of taxation for certain products impacted (either positively or negatively) the international competitiveness of EU businesses?

	To a large extent
✓	To some extent
	To a limited extent
	Not at all
	N/A

*Please explain:

Energy prices should allow EU businesses to be competitive in international markets. Targeted measures (e.g. reforming taxes and levies) should be introduced in order to address the energy-price differential with major competitors and to ensure energy security.

*In your view, what are the main obstacles to the competitiveness of EU companies created by the Energy Taxation Directive? *(Select all that apply)*

	Obstacles to innovation
✓	Obstacles to procurement
✓	Obstacles to production
	Obstacles to mobility
	Other (please specify)
	N/A

*Please explain:

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Cohherence

To your knowledge, to what extent are the provisions of the Energy Taxation Directive contribute to the following EU policy objectives?

	To a large extent	To some extent	To a limited extent	Not at all	N/A
*Reduction of greenhouse gas emissions (e.g. CO ₂ , CH ₄ , N ₂ O)			✓		
*Promotion of the use of renewable energy			✓		
*Increased energy efficiency			✓		
*Security of energy supply			✓		
*Energy diversification			✓		
*Reduction of other gases (e.g. ammonia NH ₃ , SO ₂ , particulate matter)			✓		
*Other (please specify)					✓

FINAL REMARKS

If you wish to add further information, comments or suggestions - within the scope of this questionnaire - please feel free to do so here. You can also upload a concise document, such as a position paper. The maximal file size is 2 MB.

Please note that the uploaded document will be published alongside your response to the questionnaire which is the essential input to this open public consultation. The document is an optional complement and serves as additional background reading to better understand your position.

EURELECTRIC pursues in all its activities the application of the following sustainable development values:

Economic Development

- Growth, added-value, efficiency

Environmental Leadership

- Commitment, innovation, pro-activeness

Social Responsibility

- Transparency, ethics, accountability



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