

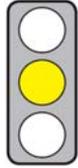
ENERGY TAXATION

Status: 25 July 2011

MAIN ISSUES

Objective of the Directive: Energy taxation is to be better coordinated with EU energy and climate policy related targets.

Parties affected: All energy consumers.



Pro: (1) The proposed harmonization of energy taxation with emissions trading is a step in the right direction.

(2) Applying consistent minimum levels of taxation to CO₂ emissions and energy content reduces tax-induced distortions when choosing an energy source.

Contra: (1) CO₂-related *minimum* level taxation does not contribute to coordinated certificate prices in emissions trading. Instead, these tax rates should be harmonized or, ideally, motor and heating fuels should be included in emissions trading.

(2) The rule that the same minimum levels of taxation in a member state must necessarily lead to the same actually levied tax rates infringes the principle of subsidiarity.

CONTENT

Title

Proposal COM(2011) 169 of 13 April 2011 for a Council **Directive** amending Directive 2003/96/EC on restructuring the Community framework **for the taxation of energy products and electricity**

Communication COM(2011) 168 of 13 April 2011: Smarter energy taxation for the EU: **proposal for a revision of the Energy Taxation Directive**

Brief Summary

References made to paragraphs and annexes relate to Directive 2003/96/EC ("Energy Taxation Directive") in the version of the amended Proposal COM(2011) 169.

► Background

- The Energy Taxation Directive 2003/96/EC defines the EU-wide minimum levels of Member States taxation for
 - electricity and
 - "energy products": fuels (petrol, gas oil/diesel fuel, kerosene, liquid gas, natural gas) or heating oils (gas oil, heavy fuel oil, kerosene, liquid gas, natural gas, coke and coal).
- The Commission criticizes the Energy Taxation Directive 2003/96/EC because:
 - the minimum levels of taxation for motor and heating fuels are only based on the volume without taking into account their energy content or CO₂ emissions;
 - the different taxation of motor and heating fuels with regard to their energy content leads to distortions in the internal energy market;
 - the taxation is not harmonized with the EU emissions trading scheme and, as a result, can lead to double burden and gaps when limiting CO₂ emissions;
 - its taxation does not encourage an efficient use of energy or energy savings;
 - renewable fuels are put at a disadvantage compared to fossil fuels with a higher energy content;
 - petrol is put at a disadvantage compared to diesel fuel with a higher energy content.

► Objective and approach

- The Commission wishes to align energy taxation to its energy and climate protection targets by 2020 by linking taxation rates to CO₂ content and to energy content.
- It wishes
 - to levy a uniform taxation on electricity based only on its energy content;
 - to levy a uniform taxation on motor and heating fuels based only on both their energy content and their CO₂ emissions; and
 - to tax CO₂ emissions in those sectors not covered by the EU emission trading scheme (EU-ETS, Directive 2003/87/EC s. [CEP Dossier EU-Klimapolitik](#), in German only, p. 11 et sqq.).
- Minimum taxation of motor and heating fuels contains two components (Art. 1 (2)):
 - a CO₂-related tax on the basis of their emissions and
 - a "general energy consumption taxation" based on energy content.
- The Commission expects additional economic growth of "up to" 0.27% of EU gross domestic product (GDP) and, if Member States use additional profits generated through energy taxation to reduce social security contributions for employers, a positive impact on employment.

► **CO₂ related taxation component**

- The CO₂-related taxation component is to create a technologically neutral advantage to all low-carbon heating and motor fuels.
- The CO₂-related taxation component
 - covers all consumers of motor and heating fuels who are not subject to the EU ETS (Art. 2 (4) and Art. 14 (1) lit. d);
 - does not apply to electricity, as this is covered by EU ETS;
 - does not apply to bio-fuels which comply with the sustainability criteria pursuant to Art. 17 of the Renewable Energy Directive 2009/28/EC (Art. 1 (2)).
- The CO₂ related taxation component will cost at least 20 Euros per ton of CO₂ emissions as of 1 January 2013 (Annex I, Tables A, B, C; s. [CEP Table](#)).
- By 2015, the Commission will review the minimum level of taxation for the first time, then every five years thereafter, and, where necessary, propose amendments (Art. 29).

► **Energy related taxation component (“general energy taxation“)**

- The energy related taxation component is to encourage efficient energy consumption and energy saving.
- The energy related taxation component amounts to (s. [CEP Table](#)):
 - for motor fuels in general – depending on which substance, different tariffs are levied, first increase on 1 January 2013 and the second on 1 January 2015 – as of 1 January 2018 at least 9.60 Euro per gigajoules (GJ) (Art. 7 in conjunction with Annex I, Table A),
 - for certain motor fuels, inter alia for use in agriculture, gardening, aquaculture or forestry, as of 1 January 2013 at least 0.15 Euro per gigajoules (Art. 8 (2) in conjunction with Annex I, Table B),
 - for heating fuels as of 1 January 2013 at least 0.15 Euros per gigajoules (Annex I, Table C),
 - for electricity as of 1 January 2013 at least 0.15 Euros per gigajoules (Annex I, Table D).
- As of 1 July 2016, the minimum levels of the general energy consumption taxation will be automatically adjusted to changes in the harmonized Index of Consumer Prices every three years (excluding energy and food) (Art. 4 (4)).

► **Rules for actually levied tax rates**

As of 2023, the rule applies that if the same minimum taxation levels apply to different motor and heating fuels, the tax rates levied by a Member State must also be the same (Art. 4 (3) in conjunction with Annex I). For instance, this holds true for the taxation of petrol and diesel fuel.

► **Exemptions**

- For agriculture, gardening, aquaculture and forestry the general energy consumption tax rate can be reduced to zero. In such a case, Member States must introduce “arrangements” which lead to a “broadly equivalent” improved efficiency (Art. 15 (3)).
- The current right of granting tax exemptions or reductions for natural and liquid gas used as propellants expires on 1 January 2023 (Art. 15 (1) lit. i).
- As of 1 January 2013, Member States must no longer differentiate between commercial and non-commercial tax treatment of gas oil/ diesel fuel (Art. 7).

► **Introduction of a tax credit in the case of a significant risk of carbon leakage**

- Companies in sectors with a “significant risk of carbon leakage” (Art. 13a (13) of the Emissions Trading Directive 2003/87/EC) must obtain a CO₂ related tax credit (Art. 14a (1) and (5)).
- The credit amount must not exceed the actually levied tax rate (Art. 14a (4)).

Changes to the Status Quo

- Until now, the minimum tax levels for motor and heating fuels have been related to the volume (petrol, gas oil/diesel fuel, kerosene), the mass (liquid gas, heavy fuel oil) or the energy content (natural gas, coal and coke). From now on, they should always be related to CO₂ emissions and the pertaining energy content.
- No requirements regarding the relationship between the actual tax rates of motor and heating fuels ensue from the current minimum levels of taxation. As of 2023, however, the actual tax rates are to be the same where the same minimum levels of taxation apply.
- To date, Member States are entitled to differentiate between the tax treatment of either commercially or non-commercially used gas oil/diesel fuel. This option is to be abolished.
- A tax credit for companies in sectors with a significant risk of carbon leakage has not existed until now.

Statement of Subsidiarity by the Commission

According to the Commission, an alignment of the Energy Taxation Directive to EU energy and climate policy related targets can only be achieved through an EU legislative act.

Policy Context

With the Energy Taxation Directive 2003/96/EC, the EU scheme for minimum levels of taxation (Directives 92/81/EEC and 92/82/EEC), which had been restricted to mineral oil, was extended to coal, natural gas and electricity.

In 2007, EU Energy policy was realigned through the "[20-20-20 Decision](#)" of the European Council of 2007, which stipulated the following EU energy and climate policy targets to be met by 2020 (s. [CEP-Dossier EU-Klimapolitik](#), in German only, p. 8): By 2020, the EU is to reduce its greenhouse gas emissions by at least 20% compared to 1990; Member States must save at least 20% of EU energy consumption projected for 2020 through improved energy efficiency; the share of renewable energies in the total energy consumption of the EU is to be at least 20% in 2020; in addition, each Member State must increase its share of bio-fuels in transport-related petrol and motor fuel consumption by at least 10%.

Within the framework of the EU Emissions Trading Scheme (Directive 2003/87/EC), greenhouse gas emissions are permitted only in certain premises if their operator is in possession of emission rights ("certificate"). The number of certificates is limited. However, certificates are tradable and therefore entail market price formation.

Legislative Procedure

13 April 11 Adoption by Commission

Open Adoption by the Council, publication in the Official Journal of the European Union, entry into force.

Options for Influencing the Political Process

Leading Directorate General:	DG Taxation and Customs
Committees of the European Parliament:	Economic and Monetary Affairs (in charge), Rapporteur: Astrid Lulling (EPP Group, LX)
Committees of the German Bundestag:	Finances (in charge); Economy; Transport; Environment; EU Affairs
Decision mode in the Council:	Unanimity: The German government has the right to veto

Formalities

Legal basis:	Art. 113 TFEU (Harmonisation of indirect taxes; ex-Art. 93 TEC)
Form of legislative competency:	Shared competency (Art. 4 (2) TFEU)
Legislative procedure:	Art. 113 TFEU (special legislative procedure)

ASSESSMENT

Economic Impact Assessment

Ordoliberal Assessment

In principle, it is appropriate to improve the alignment of energy taxation to emissions trading, as the uncoordinated application of several instruments weakens the efficiency of climate protection policy (cp. [CEP Compass EU Energy Policy](#), in German only, p. 53 f. und S. 62 ff.). However, with *minimum* levels of taxation for CO₂-related components, this coordination is only possible to a limited extent, as Member States are able to levy tax rates that exceed significantly the certificate prices of the emissions trading scheme. **Instead of prescribing minimum taxation levels, the Commission should fully harmonise EU-wide CO₂ related tax rates.**

However, rather than applying CO₂-related tax rates, **it would be even better to include motor and heating fuels in emissions trading** as early as during production or importing [**"upstream emissions trading"** (cp. [CEP Dossier](#), p. 20)]. In particular in the transport sector, consumption and therefore CO₂ emissions are slow to react to price signals. This would not be harmful to climate protection if it was included in the joint CO₂ cap of emissions trading: price signals and real adaptation options would then help detect the most efficient saving potentials across all sectors.

Moreover, a fixed CO₂-related tax component cannot be adjusted to daily price fluctuations in emissions trading. Therefore, CO₂-related taxation should be reviewed more often than every five years to allow for maximum possible alignment with emission rights prices.

Without a worldwide climate protection agreement, the carbon leakage issue (transfer of emissions to outside the EU) can only be mitigated as part of EU emission trading if the companies concerned receive cost-free emissions rights.

For the same reason, the planned accompanying tax credits are also in principle appropriate. However, such exemptions inevitably lead to distortion of competition, as the definition of exemptions is never clear enough; besides, political influence can be expected.

The possibility of taxing economic activities in a differentiated manner leads to politically motivated privileges. Therefore, abolishing the differentiation between commercial and a non-commercial treatment of motor fuel and special rules for the use of natural gas and liquid gas are to be welcomed. The continuing option of reducing the general energy consumption taxation for agriculture, gardening, aquaculture and forestry, however, remains an unjustified privilege.

The automatic adjustment of the general energy consumption taxation to changes in the harmonized consumer price index has the effect that minimum levels of taxation increase due to inflation and become more expensive for citizens, irrespective of their income trends. A regular statutory review of the minimum levels of taxation would therefore be preferable.

Impact on Efficiency and Individual Freedom of Choice

Through the consistent adjustment of minimum levels of taxation to CO₂ emissions and the energy content, tax-induced distortions when choosing the energy source are eliminated.

The rule that as of 2003 the same minimum levels of taxation of motor fuels must necessarily lead to the same actually levied tax rates restricts the Member States' freedom when it comes to tax policy. Although the equal taxation of motor fuels helps avoid distortions when choosing the drive technology in Member States, it also means that the taxation of each individual motor fuel between the Member States is not aligned. Member States are most likely to exploit it for an increase in tax burdens "prescribed by Brussels". The generous transitional period by 2023 may well facilitate enforceability, but it does not solve the underlying problem.

Impact on Growth and Employment

The positive growth and employment effects assumed by the Commission are questionable. Firstly, they are based on the assumption that additional tax income will be used for a cut in labour costs, which cannot be steered by the EU. Secondly, the energy demand and employment volume often correlate. Therefore, higher costs for energy consumption and the simultaneous reduction of labour costs must not necessarily lead to lower energy consumption and, at the same time, an increase in labour demand.

Impact on Europe as a Business Location

If Member States increase their taxation as a result of an Amendment to the Directive, the attractiveness of Europe as a business location will decrease.

Legal Assessment

Competency

Unproblematic. The EU can adjust the Member States' consumption tax rules if this is necessary to ensure the establishment and functioning of the single market and to avoid market distortion (Art. 113 TFEU).

Subsidiarity

The rule that same minimum levels of taxation for motor fuels must result in the same actually levied tax rates does not lead to harmonized motor fuels taxation among Member States. Therefore, it is not clear why an EU-wide rule must be set. Therefore, this rule **infringes the principle of subsidiarity** (Art. 5 (3) TEU).

Proportionality

Unproblematic.

Compatibility with EU Law

Unproblematic.

Compatibility with German Law

German tax rates pursuant to § 2 of the German Energy Tax Act would have to be partially adjusted (s. [CEP Table](#)).

Conclusion

Improving the harmonization of energy taxation and emissions trading is in principle appropriate. Applying consistent minimum levels of taxation to CO₂ emissions and performance reduces tax-induced distortions when choosing an energy source. However, instead of prescribing minimum levels of taxation, the EU should rather choose to harmonize EU-wide CO₂ related tax rates for motor and heating fuels. Even better than CO₂ related tax rates would be to include motor and heating fuels as early as during production or importing in emissions trading ("upstream emissions trading"). The rule that same minimum levels of taxation for motor fuels must necessarily result in the same actually levied tax rates infringes the principle of subsidiarity.