【欧州】【Common】

Common – Fit for 55 package: Latest progress on the proposal on the Energy Tax Directive recast as part of the “Fit for 55” package

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【概要：Summary】
Taxation is still largely in the competence of the EU Member States. At EU level, legislation only sets harmonised minimum rates of taxation to avoid distortions in the common market. In fact, the EU's harmonized rules set under the Directive 2003/96/EC of 27 October 2003 on restructuring the Community framework for the taxation of energy products and electricity, the “Energy Taxation Directive” (ETD), aim to ensure the proper functioning of the Internal Market. The ETD basically lays down structural rules and minimum excise duty rates for the taxation of energy products used as motor fuel and heating fuel, and electricity. Individual EU Member States are free to set their own rates as long as they respect those minimum rates. In fact, the majority of EU Member States taxes most energy products and often they are taxed considerably above the ETD minimum rates.

Nevertheless, the current ETD rules raise concerns as they are disconnected from the EU's climate and energy efficiency objectives and largely disregard the climate policy goals in the European Green Deal and international commitments to reduce GHG emissions, like the 2015 Paris Agreement. Most importantly, the ETD is not in line with EU climate and energy objectives because the directive does not adequately promote GHG emissions reductions, energy efficiency and the take-up of electricity and alternative fuels like renewable hydrogen, synthetic fuels, advanced biofuels, among others. Moreover, the ETD covers a shrinking share of the EU's energy mix as new technologies and products emerge or gain importance.

Consequently, the European Commission presented a proposal on the revision of ETD rules to support and complement the other initiatives of the EU's “Fit for 55” package of 14 July 2021 to support the EU's climate targets by ensuring that the taxation of motor and heating fuels, electricity and newly emerging alternative fuels in the EU reflect their positive or negative impact on the environment and on health.

The ETD recast is expected to benefit environmentally friendly alternative fuels and it will have an enlarged scope to include new energy products or uses. It will also abolish tax exemptions for some fossil fuels. Tax exemptions for fossil fuels used in aviation, maritime transport, fishing, and home heating will be phased out. Regarding aviation, while flights will continue to be exempted from tax on kerosene for international flights, the tax exception for intra-EU voyages in the EU would be phased out.

【記事：Article】

1. Background of the recast of the Energy Taxation Directive (ETD)

Based on the European Green Deal (COM/2019/640 final), the EU intends to achieve net-zero GHG emissions in the EU and a reduction of 90% of the transport sector's GHG emissions by 2050. The European Climate Law (Regulation (EU) 2021/1119) establishes the framework for achieving climate neutrality and incorporates the European Green Deal's targets into EU legislation.

The EU's harmonized rules set under the Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity, the "Energy Taxation Directive" (ETD) lays down structural rules and minimum excise duty rates for the taxation of energy products used as motor fuel and heating fuel, and electricity. It aims to ensure the proper functioning of the Internal Market (COM(2021) 563 final, European Commission 2021). Furthermore, individual Member States are free to set their own tax rates as long as those minimum rates laid down by the ETD are respected.

In fact, the majority of EU Member States tax energy products and electricity, and in some cases, they claim considerably higher taxes above the ETD minimum rates (European Commission 2021). However, since the adoption of the ETD in 2003, the EU's climate and energy policy framework has changed radically, and the current ETD raises concerns as it is disconnected from the EU's European Green Deal and international commitments like the 2015 Paris Agreement.

The ETD rules currently in force do not consider the energy content and CO_2 emissions of energy products and electricity and have only low minimum levels of taxation while they also support many exemptions (COM (2021) 563 final). Certain sectors including aviation and maritime transport are currently fully exempt from energy taxation in the EU. These exemptions need to be rethought, given the role of these sectors in energy consumption and pollution (European Commission 2021). Furthermore, in the current ETD, there is no link between the minimum tax rates of fuels and their energy content or environmental impact, and it is not aligned with the EU's legal commitment to reach at least a 55% reduction in GHG emissions by 2030 compared with 1990 levels, nor with the climate-neutrality objective by 2050. In fact, the ETD's range of exemptions and reductions are forms of support for the use fossil fuel fuels (European Commission 2021). This range of tax exemptions and reductions do not consider the environmental impact of the fuels and therefore, they are not in line with the objectives of the European Green Deal (COM(2021) 563 final, European Commission 2021). There is no link in the ETD between the minimum tax rates of fuels and their energy content or environmental impact nor does it consider the environmental performance of biofuels (COM(2021) 563 final). As a result, the current ETD does not support the GHG emission reduction efforts and keeps the EU's dependency from third country fossil energy sources. Moreover, the ETD covers a shrinking share of the EU's energy mix as new technologies and products emerge or gain importance.

Since the ETD's levels of taxation does not take into account the environmental impact of fuels and externalities, the current ETD can even result in inappropriate price signals to users, and disincentivise them from choosing greener and more efficient energy sources (COM (2021) 563 final). Finally, the ETD does also not reflect the EU's legal commitment of the European Climate law to achieve at least a 55% reduction in GHG emissions by 2030 and the climate-neutrality target of 2050.

Therefore, the current ETD is not a sufficient tool to promote the use of renewable energy and it does not contribute to the decarbonisation of the transport sector while its contribution to the EU's climate targets set in the 2015 Paris Agreement is limited (COM(2021) 563 final).

Therefore, new taxation initiatives at both EU and Member State level should better encourage the society and industry to switch to cleaner and more environmentally friendly and sustainable energy to reach the EU's climate policy goals (European Commission 2021).

On 11 September 2019, the European Commission published a report on the evaluation of the ETD, highlighting that the current rules do not contribute to the EU's strategic objectives regarding climate and energy (General Secretariat of the Council 2022a). The Ecofin Council of the European Union also supported an update of the legal framework for energy taxation (General Secretariat of the Council 2022a). An impact assessment and consultation of the stakeholders finished in October 2020 (European Parliament 2022a). The impact assessment showed that the ETD recast would not create an undue burden on the economy, and that the objectives could be achieved with very limited economic costs among others (COM(2021) 563 final).

Finally, the European Commission presented a proposal on the recast of ETD to aligning the taxation of energy products with the EU's energy and climate policies and to support the EU's climate targets, thereby complementing the other initiatives of the "Fit for 55" package of 14 July 2021 (European Commission 2021).

2. The proposal on the recast of ETD as part of the "Fit for 55" package

The Commission presented a proposal for a Council Directive restructuring the Union framework for the taxation of energy products and electricity (recast) ("the ETD proposal") (COM (2021) 563 final) as part of the "Fit for 55" package. The "Fit for 55" package consists of a set of interconnected proposals for ensuring a fair, competitive, and green transition by 2030 and beyond (General Secretariat of the Council 2022a).

The ETD proposal aims at contributing to the EU 2030 targets and climate neutrality by 2050 in the context of the European Green Deal, aligning the taxation of energy products and electricity with EU energy, environment, and climate policies. The proposal also intends to preserve and improve the EU internal market by updating the scope of energy products and the structure of rates and by rationalising the use of tax exemptions and reductions by Member States. It also preserves the capacity to generate revenues for the budgets of the Member States (General Secretariat of the Council 2022a, 2022b).

The new proposal intends to help reducing the use of fossil fuels by setting higher tax rates for fossil fuels and lowering the rates for renewables products. It also reviews the possibility of tax reductions and exemptions, which currently lower the taxation of fossil fuels in aviation (European Commission 2021). The new rules also help securing revenues for Member States from green taxes, and they will remove outdated exemptions and incentives for the use of fossil fuels, for example in EU aviation transport, while promoting clean technologies (European Commission 2021).

The proposal for the ETD recast will alter the way in which energy products are taxed in the EU. In the Commission's view, the objectives could be achieved by switching from taxation based on volume to taxation based on energy content, by establishing a ranking of rates based on environmental performance, and by limiting incentives for fossil fuel use. Based on this ranking, conventional fossil fuels, such as gas oil and petrol, would be taxed at the highest rate and electricity would be taxed at the lowest rate (General Secretariat of the Council 2022a, European Parliament 2022a). The EU Member States must ensure that this ranking is introduced domestically (European Commission 2021).

The revised ETD will also remove outdated exemptions and incentives for the use of fossil fuels, like in EU aviation and maritime transport, while promoting clean technologies (COM(2021) 563 final, European Commission 2021). The revised ETD will have an enlarged scope of energy products or uses that had previously benefitted from energy tax exemptions like kerosene in the aviation framework. These exemptions will be phased out and fossil fuels used as fuel for intra-EU air transport, maritime transport and fishing would no longer be fully exempt from energy taxation in the EU (European Parliament 2022a). In aviation, energy taxation would be introduced for intra-EU voyages within the EU. At the same time, several national exemptions and rate reductions will be removed, and this leaves less margin for the EU Member States to set rates below the minima for specific sectors (European Commission 2021).

As a result, the revised ETD can contribute to the increased ambition of at least 55% reduction in GHG emissions by 2030 and to the achievement of the clean technologies advantage. This would ensure that the taxation of motor and heating fuels reflects better the impact they have on the environment and on health.

The revised ETD would therefore facilitate the transition away from fossil fuels towards cleaner energy to deliver on the EU' s climate neutrality objective, in line with the commitments under the Paris Agreement (COM(2021) 563 final).

3. The state of play in the ETD recast

The proposal COM (2021) 563 final for a revision of the Council directive on the taxation of energy products and electricity intends to align the taxation of energy products and electricity with the EU' s energy, environment, and climate policies. It also intends to improve the EU internal market by updating the scope of the taxation and the structure of rates as well as by rationalising the use of tax exemptions and reductions by Member States.

Since the restructuring of the ETD in COM (2021) 563 final is a proposed Council Directive on the recast of the ETD, it is based on Article 113 TFEU and covered by a special legislative procedure. According to Article 113 TFEU, "the Council shall, acting unanimously in accordance with a special legislative procedure and after consulting the European Parliament and the Economic and Social Committee, adopt provisions for the harmonisation of legislation concerning turnover taxes, excise duties and other forms of indirect taxation to the extent that such harmonisation is necessary to ensure the establishment and the functioning of the internal market and to avoid distortion of competition." (Article 113 TFEU 2008).

The role of the European Parliament will be to give its opinion, while the Council alone will adopt the act after consulting the European Parliament, without being obliged to follow the Parliament' s opinion (COM (2021) 563 final).

In the European Parliament, the file is being examined by the Economic and Monetary Affairs committee (ECON) with Johan Van Overtveldt as rapporteur. The European Parliament' s Committee on Industry, Research and Energy (ITRE) is the associated committee under Rule 57 of the Rules of Procedure in the European Parliament and has appointed Robert Hajšel as its rapporteur.

In the ECON Committee, rapporteur Van Overtveldt delivered a draft report on 28 February 2022, and the vote in the Committee was scheduled for 26 September 2022 (European Parliament 2022a). The rapporteur Van Overtveldt acknowledges, that the ETD proposal contains some good elements, such as the change from volume to energy-content as the basis for taxation and the broadening of the taxable base. These elements contribute to a more predictable, uniform, and targeted regulatory framework. However, rapporteur Van Overtveldt raised some concerns reg. the proposal, as it pushes electrification by taxing electricity at the lowest rate. He criticises that the taxation should consider the source of electricity production for the taxation of electricity, among others (European Parliament 2022b). Furthermore, the criteria used by the Commission to determine the new minimum rates remain unclear and it also remains unclear how effective the environmental ranking proposed by the Commission would be to achieve a better environmental outcome (European Parliament 2022b).

In the Council, the examination of the proposal and the state of play regarding the restructuring of the ETD has started in the Working Party on Tax Questions and is still under discussion. The French Presidency considered it necessary regarding the complexity of the ETD proposal to have further technical discussions in the Working Party on Tax Questions since delegations will need to work on possible compromise solutions on a wide range of issues (Council of the EU 2022a).

The French Presidency considered it useful to further develop the definition of the tax categories and minimum levels of taxation, including the possibility of applying a derogation regime to certain products like gas and LPG. Furthermore, the implementation of the new rules on classification between categories of products and "equal level of taxation" within the same category of products should be developed, including the proposed abolition of the possibility of differentiating the tax rate on diesel for commercial use in road transport (Council of the EU 2022a).

The French Presidency also considered it being important to abolish the exemptions for the aviation and maritime sectors. Also, the treatment of mixed products, in particular the measurement of their energy content should be considered, among others (Council of the EU 2022a).

Moreover, the scope of the ETD needs to be considered in the light of its links with the other files in the "Fit for 55" package, in particular the Renewable Energy Directive and the Energy Efficiency Directive. Finally, the French Presidency noted that it was too early to make definitive remarks on the content of a possible compromise agreement with a view to a Council general approach on this legislative file (Council of the EU 2022a). At the Economic and Financial Affairs Council on 17 June 2022, the Council took note of the French presidency's progress report on the recast of the ETD without discussion on the report (Council of the EU 2022a). After the handover of the presidency in the Council to the Czech Republic, the preparation to the policy debate continued (General Secretariat of the Council 2022a).

On 6 December 2022, the Czech Presidency issued a note with the state of play on the recast of the ETD. The Czech Presidency asked the ministers to continue working on the ETD, ensuring the Member States are able to comply with the long-term EU environmental targets, while, at the same time, they should have sufficient flexibility. The Economic and Financial Affairs Council was invited to hold a policy debate based on the questions prepared by the Presidency (Presidency, Council of the European Union 2022). Furthermore, the Czech Presidency proposed that future work on the ETD should seek to reach a compromise striking a balance between the EU minimum levels of taxation and the length of transitional periods to accommodate the EU Member States' economic, geopolitical, geographical, and social circumstances, in particular in relation to the most sensitive sectors.

During the Czech Presidency, some progress was made, but further work is still needed on some topics including the pace of the gradual implementation of the new rules and of the phasing out of some tax exemptions in the aviation and maritime sectors and the EU minimum levels of taxation taking into account the environmental objectives of the ETD proposal, among others (Presidency. Council of the European Union 2022).

During the Czech Presidency, definitions of renewable and low-carbon products, in particular integrating the definitions into the ETD rather than referring to non-tax legal acts as well as taxing electricity independently without any reference to energy products to allow Member States to apply a more tailored tax policy were also a discussed issue among others (Presidency. Council of the European Union 2022).

Furthermore, progress was made on the question of the interaction of the future ETD with other files included in the "Fit for 55" package, like the revision of the EU-ETS, and with the state aid rules, like the General Block Exemption Regulation currently being revised, among others. However, the Czech Presidency is of the view that the Member States are committed to continue the work on the file, to reach an agreement as soon as possible (Presidency. Council of the European Union 2022). In fact, the ETD recast is a consultation procedure that requires unanimity in the Council decision while the role of the European Parliament is limited to providing its opinion on the file (European Parliament 2022b). Building on the progress made by the previous Presidencies, the Czech Presidency carried out intensive work with the objective to make as much progress on this file as possible (General Secretariat of the Council 2022b).

On 6 December 2022, the ministers of the Economic and Financial Affairs Council held a political debate on the Czech Presidency's note on the state of play on the revision of the ETD. The ministers welcomed the progress made and they expressed their commitment to continue work towards reaching an agreement as soon as possible (Council of the EU 2022b, General Secretariat of the Council 2022b).

The Commission proposed 2023 for the Directive to enter into force. This seems a rather ambitious date considering the fact, that the Council has not agreed on all aspects of the proposal, yet.

4. Conclusion

Taxation remains predominantly a competence of the EU Member States. The current ETD, which was introduced in 2003, lays down structural rules and minimum excise duty rates for the taxation of energy products used as motor fuel and heating fuel, and electricity to fix minimum taxation rates to avoid distortions in the common market. However, the current ETD in force dates back to 2003 and is no longer fit for purpose. The current timing of the revision of the ETD is challenging and an agreement will be difficult because the EU Member States are all suffering of higher energy prices caused by to the Russian war in Ukraine, the sanctions against Russia and the inflation in general. This makes the timing of the introduction of the revised ETD more difficult, because the new ETD could cause a further rise of price due to the added taxes.

A recast of the ETD will only be a success if the new legislation considers all the shortcomings of the current rules. In particular, the revised ETD will have to consider the climate and energy efficiency objectives of reaching the 2030 GHG emission reduction target of 55% compared to 1990 levels. It also will have to introduce a new structure of tax rates based on the energy content and environmental performance of the fuels and electricity.

Furthermore, it will also have to put an end to a wide range of tax exemptions and reductions for fossil fuels. At least fossil fuels in the aviation sector within the EEA on intra-EU flights, in maritime transport and fishing should no longer be fully exempt from energy taxation in the EU and new, environmentally friendly energy products such as green hydrogen should benefit from the new taxation scheme.

Therefore, the proposal on the ETD recast (COM (2021) 563 final)'s main objective is to change the taxation of energy products to meet the EU's climate targets and to aligning taxation of energy products and electricity with the EU's energy and climate policies.

While the revised ETD should come into effect from January 2023, since the decision-making process is not concluded yet, the introduction might be postponed.

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