

Revision of the Energy Taxation Directive

A Eurelectric position paper

November 2021

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.

Dépôt légal: D/2021/12.105/51

Eurelectric's position on the revision of the Energy Taxation Directive

Eurelectric welcomes the European Commission proposal to review the Energy Taxation Directive (ETD) as part of the Fit for 55 Package.

Since the ETD's adoption in 2003, energy markets and technologies in the EU have developed significantly. EU positioning and commitment concerning decarbonisation and climate change mitigation have evolved dramatically, including initiatives such as the Paris Agreement, the Clean Energy Package and now the European Green Deal. All this brings the EU closer to the ambitious and necessary goal of decarbonisation of the economy with the energy sector at its core.

It is high time for an ambitious revision critical to the adoption of a more efficient, fair and harmonised energy taxation framework, aligned with climate and energy transition goals. Renewable and carbon-neutral electricity is the energy carrier that is truly capable of making Europe the first climate neutral continent by 2050. Unfortunately, taxes, levies, and charges account for, on average, one third of the electricity bill in EU Member States and even up to 70% in some cases, discouraging the use of electricity-based technologies and services¹.

Regrettably, taxes, levies, and charges are often higher for electricity than for fossil fuels. To encourage the use of electricity-based technologies and services it is of paramount importance to have a fiscal system that would ensure that taxes, levies and charges incentivise electrification and therefore are lower than those applied to fossil fuels.

Eurelectric welcomes the proposal for the recast ETD that explicitly tackles the need to rebalance the taxes on different energy carriers and attempts to make the ETD fit for purpose to address the challenges ahead. The revised Directive would enable the transition and the use of less polluting energy products and electricity, as well as an efficient and well-functioning internal energy market.

Role of electricity

The explicit recognition of the role of electricity that **“can drive the EU's clean energy transition towards achieving the objectives of the European Green Deal and ultimately climate neutrality by 2050”** is a testament to the contribution of the electricity industry to the energy transition and the shift in the EU's approach towards electrification. We welcome this acknowledgement, and the ranking of electricity among the lowest taxed energies, as recognition of its important contribution to the European Green Deal and the decarbonisation of the economy.

¹ Energy Prices and Costs in Europe, Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1602774170631&uri=CELEX:52020DC0951>

Scope of the revised Directive

While recognising that the ETD covers only excise duty, Eurelectric believes that the Commission should consider a broader and more holistic approach to the energy taxation framework. This would translate into including in the revised ETD the rules on the Member States' own initiatives **covering other fiscal and para-fiscal charges** related to the overall activities within the electricity value chain and that contradict the energy and climate goals and hamper electrification. The ETD should set the principles and guidelines towards more efficient energy taxation in the EU and an effective single energy market to accomplish the ambitious decarbonisation goals and commitments. Various charges and levies take up an even more significant share in the energy price in comparison to the taxes. Ultimately, this situation negatively impacts electricity prices and goes against the push for electrification as foreseen by the proposed lowest taxation rate. It also contradicts the efforts towards higher flexibility of the electricity system, since as a result wholesale price cannot be properly reflected in the retail electricity prices.

It is of great importance to rebalance the weight of all fiscal and para-fiscal charges between electricity and fossil fuels in order to incentivise the electrification of the economy needed for achieving carbon neutrality.

Including such rules on charges and levies in the ETD or another legal instrument will help to establish harmonised principles and mitigate discretion among the Member States. These charges should be preferably covered by the state budget. For instance, RES incentives should be funded by all final uses of energy, not by electricity only. In doing so, those energies with more CO₂ emissions should bear a higher share of the cost.

Examples of such parafiscal charges and levies include:

1. Taxes on generation, such as the ones in Spain
2. Clawback initiatives in Portugal (a mechanism that intends to ensure competitive equilibrium in the Iberian electricity wholesale market)
3. Clawback initiatives in Spain (regarding natural gas and CO₂) that offset and distort the economic efficiency of market mechanisms
4. Social tariff funded by electricity generators (CCGT and Hydro) in Portugal
5. Other taxes and levies: special contribution of the energy sector (CESE) in Portugal that is supposed to be an extraordinary and temporary contribution paid by generators and grid operators based on their net assets (even if they have negative results)
6. Opslag Duurzame Energy (ODE) in the Netherlands added on top of the energy taxation while its revenues are allocated exclusively to CO₂ reduction subsidies. The ODE at the moment is also being charged to electricity, even if it is generated from renewable sources.
7. Charges for renewable support (e.g., in Czechia and Germany), even if the whole society benefits from the higher proportion of RES in the energy mix, not only electricity customers.

8. Policy costs included in tariffs: Member States include all sorts of costs in electricity tariffs that should not be exclusively borne by the electricity sector. An example is a Spanish initiative of taking out the costs from RES in the electricity bill and allocating them also to the oil and gas sectors.

Energy content-based taxation and minimum rates ranking (Art.1, Art. 5, Art. 10)

Eurelectric supports the switch to energy content-based taxation (EUR/Gigajoules) and the introduction of a ranking of rates according to environmental performance. It allows the ETD recast to better allocate the weight of taxes on different energy carriers. We therefore support that the minimum tax rate of an energy product should be based on the amount of GHG emitted per Joule.

We also welcome the approach, according to which **electricity is among the least taxed energy sources** in views of fostering its use, notably in the transport sector. Electrification is undoubtedly critical for energy efficiency and decarbonisation, and limiting the combined weight of taxes on electricity will help make electricity more affordable and contribute to minimising the social and distributional impacts of decarbonisation policies. The lowest base rate assigned to electricity paves the way to electrification across the board, including in the hard to abate sectors.

To maintain the significance of the lowest tax rate, unnecessary burdens should be avoided, and the **indexation rules for the minimum rate** should be applied automatically as soon they have a significant impact (i.e., not necessarily on a yearly basis but rather based on a relevant threshold). Moreover, applying indexation based on producer prices in industry would be a more relevant approach. This would partially alleviate the administrative burden that goes against the objectives of the EU Green Deal and the Fit for 55 Package.

The proposal would also benefit from an explicit **provision on self-consumption** since the provisions of the current ETD version may create a barrier for the adoption of a more decentralised RES based ecosystem. Self-consumption should be exempted at least up to a certain threshold, for instance for small self-consumption that should be clearly defined (home PV, for example). The threshold, however, must not distort competition within the electricity market and must be in line with Electricity Market Regulation. The ETD provides the possibility for Member States to exempt small producers, however, it does not provide for a definition of a small producer, which might lead to a proliferation of different frameworks and rules across the Member States. To maintain the exemption for small producers, a clear definition should be included, at least by providing a reference in the implementing acts.

Electricity, regardless of its final use, should be taxed equally and remain the least taxed fuel. For instance, electricity used for charging vehicles and aircraft should not be taxed higher than the proposed electricity consumption rate.

At the same time, the **transitional period of 10 years** applied, for instance, to the use of the 2/3 reference rate to natural gas, LPG and hydrogen of fossil origin is questionable. With regard to the existing fossil fuels, it does not necessarily

strengthen the achievement of the Fit for 55 objectives within this decade. At the same time, it does not take into account the contribution of electrolytic hydrogen and derived fuels to the decarbonisation of hard-to-abate sectors like industry and heavy-duty transport since the increase of taxation is not consistent with the fact that the electricity mix will further decarbonise.

However, if for the sake of reaching the much-expected consensus among the Member States, the proposed option is maintained:

- For fossil fuels, it would be very important not to prolong this 10-year period any further.
- For electrolytic hydrogen produced from renewables and carbon-neutral sources, the reference rate could be lowered to take into account its contribution to decarbonisation.

Minimum taxation levels for sustainable biomass (Art.3, Annex IX of Directive (EU) 2018/2001)

The proposed ETD lists three categories of solid biomass: non-sustainable biomass, sustainable biomass and advanced biofuels. The sustainable biomass gets a minimum taxation level and has to meet additional requirements listed in Annex IX of REDII.

Biomass sustainability criteria and thresholds for demonstrating compliance with them should be aligned with the revised REDII.

First and foremost, our position is that a stable rulebook for sustainability and GHG savings criteria for bioenergy should be ensured within the revised REDII. Robust and harmonised implementation of the sustainability criteria for biomass in REDII by Member States and economic operators is crucial. Generally, Eurelectric believes that a constant change in the sustainability criteria for biomass might have a negative effect on the market. Therefore, before further changes, priority should be given to the implementation of the current sustainability and GHG emissions criteria to gain experience and further insights into biomass markets.

Exemption from taxation for electricity production (Art.13)

Eurelectric supports the exemption for electricity and energy products used to produce electricity and electricity used to maintain the ability to produce electricity, however, clarification is needed on **situations where Member States' individual derogations cannot be applied** for reasons of environmental policy (for instance for renewable and carbon-neutral electricity). The Member States should be required to justify any derogations under a very clearly defined framework.

The general shift towards optional tax exemptions rather than mandatory tax exemptions could be subject to long and complex state aid rulings and carry a great deal of regulatory and economic uncertainty. We regret this situation in relation to energy products used to produce electricity (**Art 13.2**), as well as regarding electricity produced by cogeneration (**Art 16(c) and Art 17(a)**).

Additionally, the same rule of exemption for energy products used to produce electricity should apply to renewable and carbon-neutral electricity used by electrolyzers to generate renewable and carbon-neutral hydrogen. This would take into consideration the principle to tax the output rather than the input, as well as the critical role renewable and carbon-neutral hydrogen plays in decarbonising certain uses, for which direct electrification is not yet the most cost-efficient option.

Overall, the ETD should adhere to the principle that electricity should avoid double taxation and any overlap with EU ETS. Electricity should be taxed at time of output (final use) and not input (generation).

Tax exemption on aviation and maritime fuels (Art. 14 and 15)

We welcome the fact that the Commission proposes to review and gradually phase out the existing exemptions. It is our position that tax exemptions on aviation fuels should be partially removed to encourage the switch to cleaner transportation and totally removed when a cleaner alternative solution is economically feasible.

In some harbours, a cleaner alternative to the self-production of electricity onboard a vessel exists with the use of shore-side electricity (connection to the on-shore electricity grid). To incentivise its development and use, considering the exemption proposed by the Commission for onboard production, shore-side electricity provided to vessels while at berth in ports could be exempted from taxation.

Reductions/exemptions on the level of taxation for clean electricity (Art. 16)

Maintaining the provision on the possibility for the Member State to apply taxation that is lower than the proposed minima for less pollutant energy products, for instance, renewable and carbon-neutral electricity, is also supported by our association.

Complementing the ETD provisions, the revised Renewable Energy Directive should incentivise the Member States to support RES-based electrification, including through making full use of the Art. 16 under the current proposal, and avoid taxes and levies schemes that distort the economic efficiency of market mechanisms or the EU ETS purpose.

Exemptions for vulnerable households (Art. 17(1c))

Eurelectric supports the use of global social welfare tools and measures to alleviate vulnerable households struggling to pay their bills. Considering the nature of taxation, the use of tax policy to help vulnerable or energy poor households' bills could allow for fair burden-sharing across the population.

We however would like to draw attention to the inconsistency and risk of including an EU-wide definition of vulnerable households in the ETD since it is covered by the Internal Market for Electricity Directive (Directive (EU) 2019/944), which is already being implemented in Member States. This legislative act provides the principles for such a definition and sets the responsibility of the Member States to properly define vulnerable and energy poor consumers.

Furthermore, a proper distinction needs to be made between energy poor and vulnerable customers. The next step should be to require Member States to consistently implement the definitions found in the framework of the Clean Energy Package's energy poverty and vulnerability strategy (currently included in the National Energy Climate Plans). This will adequately delimit the scope of the consumers covered by such a definition, as well as the coordination/coherence with the Energy Efficiency Directive revision and the Social Climate Action Fund in terms of introducing support mechanisms for vulnerable households.

Tax exemptions for vulnerable households are only one tool to alleviate the bills burden, and Member States should ultimately retain the choice of the tools they might decide to use. Monitoring the justification for such vulnerability should not bring an additional burden for the operators. Energy poverty and vulnerable households should rather be treated by national measures and social policies rather than energy taxation exemptions. Specific exemptions for these categories of consumers are not fully in line with intentions to decrease the number of exemptions within the ETD.

Suppliers' responsibility in case of bad debt (Art. 22(4))

Even though the provision of Art. 22(4) stating that "electricity, and natural gas and hydrogen shall be subject to taxation and shall become chargeable at the time of supply by the distributor or redistributor" was originally included in the text of the Directive, Eurelectric's position is that in parallel with the VAT system, these taxes should be applicable at the time of collection and not at the time of delivery of the energy by the supplier. The Directive should address these issues to avoid the exposure of energy suppliers to the risk of bad debt. Unfortunately, the ETD does not foresee the possibility of suppliers recovering the tax applicable to the electricity and natural gas in bad debt invoices. Suppliers should not bear the tax responsibility for bad debt, thus the ETD should provide for a rule, such as the one in the VAT Directive allowing for the tax recovery (Art. 90 of the Directive 2006/112/CE).

Taxation of stored electricity (Art. 22(4))

Eurelectric welcomes the amendments to avoid double taxation of storage. However, they could be formulated more clearly. Currently, it is unclear which role "redistributors" represent. Redistributors shall be defined in Article 2 "Definitions" to avoid double taxation.

Moreover, the formulation "electricity storage facilities and transformers of electricity may be considered as redistributors when they supply electricity" should be further amended to i) clarify the "transformers" in comparison to the "electricity storage facilities" and to ii) make the treatment of storage facilities as redistributors mandatory and not optional (amending "may" to "shall"). The applicability of this provision to batteries of electric vehicles (EVs), especially in the specific case of vehicle-to-grid (V2G), should also be clarified. This formulation should apply to the energy used to charge EV batteries. The purchase of stored electricity should be exempted from excise duty.

The provision should consider exempting the storage within self-consumption to avoid discrimination between different configurations (behind-the-meter vs. connected to the grid).

Furthermore, the responsibility for the tax should be further clarified: whether it lies with the operator of the storage facility or with the supplier. We would recommend that the excise duty is paid by the supplier except if such a practice leads to unfair competition.

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



Union of the Electricity Industry - Eurelectric aisbl
Boulevard de l'Impératrice, 66 – bte 2 - 1000 Brussels, Belgium
Tel: + 32 2 515 10 00 - VAT: BE 0462 679 112 • www.eurelectric.org
EU Transparency Register number: [4271427696-87](https://ec.europa.eu/transparency/regexpert/?s=details&id=4271427696-87)