

Energy Taxation Directive

Fields marked with * are mandatory.

Introduction

Directive 2003/96/EC has been in force since 2004. Its effect on the single market, including on competition, has never been assessed. The Energy Taxation Directive contains a set of minimum rates and a number of optional tax schemes which reduce the level of harmonisation but which have never been given a proper assessment. Since its entry into force, the Energy Taxation Directive has been subject to a growing number of interpretations by the European Court of Justice, indicating that certain provisions lack clarity.

Before deciding on whether any action is required and before making concrete proposals for change, it is important to capture effectively the current state of play as regards the effects from the application of the Energy Taxation Directive.

The objective of this consultation is therefore to gather factual information, data, knowledge and perception about the application of the Energy Taxation Directive in order to identify whether the current levels of taxation applied to motor fuels, heating fuels and electricity in accordance with the different provisions of the Directive, are still fit for purpose, in particular to ensure the proper functioning of the internal market.

The questionnaire takes about 30 minutes to complete. The questionnaire is accessible in all official EU languages.

Background

Ensuring the sustainable development of Europe has become a key policy priority for the European Union. It is based on multiple economic objectives – balanced economic growth, price stability, a highly competitive market economy – but also objectives of a social, environmental, technical and scientific nature. In order to facilitate the achievement of these objectives, the internal market concept had to be adapted (i.e. focusing on the protection of rights and avoiding hindering the free movement).

The EU excise duty framework on energy products and electricity aims to fulfil following mission:

- Eliminating all tax discriminations and ensuring the proper functioning of the internal market;
- Serving the realisation of all objectives laid down in the Treaties and relating to the realisation of the internal market;
- Avoiding the distortion of competition;

- EU policies in the Energy Union.

Council Directive 2003/96/EC lays down the European Union rules on the taxation of energy products and electricity. It covers products used as motor fuel or heating fuel (i.e. to operate engines or to produce heat) and electricity. Other uses of energy products, such as their use as raw material, and some uses of electricity fall outside the scope of the Directive.

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.

The Energy Taxation Directive defines what exemptions and reductions to the Member States' standard rates are allowed and under which conditions. Some exemptions are mandatory, such as those applying to energy products and electricity used to produce electricity. Optional exemptions and reductions also apply, for instance in favour of energy-intensive businesses. Most Member States have also made use of the possibility to apply differentiated national rates of taxation to the same products under certain circumstances or conditions, thereby integrating different policy objectives in their energy policy.

The objective of the Energy Taxation Directive is to ensure that the internal market operates smoothly and avoid double taxation or major distortions of trade and competition between energy sources and energy consumers and suppliers which could result from considerable differences in national tax rates. The excise framework has led to the convergence of the EU Member States' national legislations but still faces a number of structural challenges. These challenges relate in particular to the creation of a level playing field in the single market and to the movement of energy products within the Union.

Your contribution

* Your reply:

(Note that, whatever option chosen, your answers may be subject to a request for public access to documents under Regulation (EC) N° 1049/2001)

- Can be published with your personal information (I consent to the publication of all information in my contribution in whole or in part including my name or my organisation's name, and I declare that nothing within my response is unlawful or would infringe the rights of any third party in a manner that would prevent publication)
- Can be published provided that you remain anonymous (I consent to the publication of any information in my contribution in whole or in part (which may include quotes or opinions I express) provided that it is done anonymously. I declare that nothing within my response is unlawful or would infringe the rights of any third party in a manner that would prevent the publication.

* Are you responding on behalf of an organisation or as an individual?

- Individual
- Business
- Business organisation (e.g. trade association) or advisory body (e.g. law firm, consultancy)
- Public authority
- Civil society organisation
- Academic/research institution

- International organisation
- Other (please specify)

If other, please specify:

Please indicate your name/the name of your business/organisation/the institution for which you respond to this consultation:

APIGCEE – Associação Portuguesa dos Industriais Grandes Consumidores de Energia Eléctrica
(Association of Large Industrial Electricity Consumers in Portugal).

Transparency Register number:

663223020624-44

*Where do you live/where are the headquarters of your organisation (main headquarters in the case of multinational companies)/where is your public authority located?

- Austria
- Belgium
- Bulgaria
- Croatia
- Cyprus
- Czech Republic
- Denmark
- Estonia
- Finland
- France
- Germany
- Greece
- Hungary
- Ireland
- Italy
- Latvia
- Lithuania
- Luxembourg
- Malta
- Netherlands
- Poland
- Portugal
- Romania
- Slovakia
- Slovenia
- Spain
- Sweden

- United Kingdom
- Other (please specify)

If other, please specify:

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	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
* Protecting the environment and achieving international commitments in that regard	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
* Safeguarding and improving the competitiveness of EU companies	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

Comment:

The scattering of the different taxes introduces more perturbation than harmonization or improvement in the energy market as well as deep imbalances in the economic framework.

Even so, the exemptions for Energy Intensive sectors, common to all State Members are key to guarantee the competitiveness of the European Industry in global markets and within European Union.

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

The Energy Taxation should be in line with the guidelines of the Clean Energy Package.

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:

The harmonization of energy taxation does not improve by setting minimum values; the environmental policy must be defined at European level but it is nevertheless an important tool for improving business competitiveness.

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	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
* Legal certainty for economic operators, particularly in cross-border situations	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
* Transparency of rules	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
* Level playing field between economic operators	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

Other (please explain):

A minimum European tax imposes the same minimum value for all Member States, but since the minimum value is fixed the actual taxes can increase or decrease (above the minimum) at any moment. Having minimum levels of taxation improves transparency across all economic operations, as it brings the need to monitor and compare tax rates among different Countries.

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)	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

* Differentiated national rates depending on quantitative consumption levels for electricity and energy products used for heating purposes (Article 5)	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
* Differentiated national rates for local public passenger transport (including taxis), waste collection, armed forces and public administration, disabled people, ambulances (Article 5)	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
* Differentiated national rates between business and non-business use for heating fuels, heating gas oil and electricity (Article 5)	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
* Differentiated national rates between commercial and non-commercial use of gas oil used as propellant (Article 7(2))	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
* 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))	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
* 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))	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

Other (please explain):

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))	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

* Energy products supplied for use as fuel for the purpose of air navigation other than in private pleasure-flying (Article 14(1)(b))	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
* 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))	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
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))	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
* Electricity (Article 15(1)(b))	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
* Refund to the producer of some or all of tax paid by consumers on electricity produced from products specified in Article 15(1)(b)	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
* Energy products and electricity used for agricultural, horticultural or piscicultural works and in forestry (Article 15(3))	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
* Taxable products from biomass (Article 16)	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
* 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))	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
* Other	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please specify:

Exemptions are fundamental for insuring competitiveness of the European industry with their external counterparts and in the internal market for each sector.

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
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* Tax revenues	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
* Transport	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
* Agriculture	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
* Energy	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
* Industry	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
* Environment	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
* Competitiveness	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
* Other	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

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	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
* Transport	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
* Agriculture	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
* Energy	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
* Industry	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
* Environment	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
* Competitiveness	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
* Other	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please explain:

Article 16 (biofuels): It is essential that extensive impact assessments are carried out when considering changing the tax levels of energy products which contain biofuels or water to avoid any unintended consequences. These exemptions, when applied, must be documented and made available to others, to evaluate the applicability in other states and maintain the transparency goals of the Directive.

Article 17.1. (a) on the definition of energy-intensive businesses should not allow Member States to define their own criteria as this may fragment the EU-energy market or endanger a European level-playing-field. Moreover, while we recognise the good intentions of Article 17, the lengthy and administrative burdensome procedure related to it (state aid notifications to DG COMP) undermines the Commission's goal.

This kind of tools must be fixed at European level and the possibility of Member States applying, or not, a reduction and its range can undermine the final objective of creating a level playing.

It is key for European industry that exemptions for energy intensive consumers are maintained, and in line with ETS.

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?

Despite the Energy taxation Directive is equal for all Member States and minimum levels and exemptions apply to all, the same cannot be said regarding the ETS compensation guidelines for the indirect costs that are only applied in some countries.

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?

The environmental policy must be done at European level; taxation at country level could be misaligned with the European needs. In the case of electrical energy, taxes should take into account the kind of fuel which is applied in the production process and the corresponding environmental impact.

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))	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
* 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))	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
* 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))	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
* 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))	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
* Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

Other (please specify):

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?

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

* Please explain:

The taxation could have important impact in the goods final costs, so different taxes will impact negatively in the competitiveness.

As countries outside ETS do not support CO2 costs, the exemptions allowed by the Energy Taxation Directive are important to support European industries competitiveness as well as global climate protection.

* 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:

Different taxes in Europe starts affecting the internal competitiveness, in the international market the effect will be function of the tax and the exportation volume.
 For energy intensive consumers, the energy cost represents a large amount of the production costs.
 Therefore every tax or exemption is fundamental for the decision of maintaining industry in Europe or moving jobs to other countries.

* 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:

For products that are in a global market, taxes could inhibit companies to have a production price allowing them to survive in European countries, with a strongly negative impact on GDP, mainly in Member States with weaker economic growth.

Coherence

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. CO2, CH4, N2O)	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
* Promotion of the use of renewable energy	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
* Increased energy efficiency	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
* Security of energy supply	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
* Energy diversification	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
* Reduction of other gases (e.g. ammonia NH3, SO2, particulate matter)	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
* Other (please specify)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

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.

In case you have chosen to remain anonymous, please make sure you remove any personal identification data from the document.

Please upload your file

The maximum file size is 1 MB

Contact

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