

VIK-Feedback

to the Proposal on the Revision of the Energy Taxation Directive (Fit-for-55 package)

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*The German association of industrial energy consumers (VIK e.V.)
welcomes an opportunity to provide feedback on the Proposal for a Council Directive
restructuring the Union framework for the taxation of energy products and electricity
COM(2021) 563 final*

As an integral part of the European Green Deal Package, the Revision of the Energy Taxation Directive is aiming to align the taxation of energy products and electricity with other Green Deal initiatives and contribute to climate neutrality by 2050. The EU-Commission is also planning to foster investments in green industry by making rules clearer so the updated regulations will help facilitate the transition away from fossil fuels towards sustainable fuels. Motor and heating fuels, as well as electricity, will be taxed based on their energy content and environmental impact; some tax exemptions that favour certain fossil fuels and carbon-intensive economic sectors will be possible to apply.

In this position paper, we analyse in detail several amendments, which will impact on the energy-intensive industries and industrial park operators in Germany, and provide recommendations for the further legislative process.

1. Current exemptions for large energy consumers should be kept under the proposed structure of tax rates based on the energy content

A system change of energy taxation based on the environmental performance (a decrease of GHG emissions, improvement of energy efficiency) and energy content rather than energy volume will increase pressure on energy-intensive industries including industrial park operators and lead to higher production expenditures. High taxation rates of carbon-intensive fuels may increase energy and electricity prices in the whole production chain, weaken investment security and influence negatively on the global competitiveness of the European energy-intensive manufacturers and industrial park operators. A proposed energy tax system change based on the energy content bears also a risk of additional difficulties by the interpretation and analysis of taxable base for fuels, especially for substitute fuels.

Increased energy taxes on fossil fuels enable carbon leakage and industrial relocation (including investments replacement outside the EU), which limits the competitiveness of European energy-intensive industries including industrial park operators, and pose challenges to governments in achieving the Paris Agreement goals as well, because the transformation to climate neutrality requires a high level of private investment in energy efficiency and a shift to renewable energy sources. The introduction of increased energy taxes should not lead to unnecessary burdens for businesses on the domestic and export markets and should be in line with applicable WTO rules. Otherwise, the location of such businesses in Europe will not be possible and economically viable. If the proposed tax reform based on the energy content will be introduced, the existing tax exemptions for energy-intensive manufacturers and industrial park operators should be necessarily taken into account; a question about preferential treatment of energy/electricity use for private or commercial purposes should be avoided.

As some companies can be put at risk by double regulations and additional costs for GHG emissions, a practical application of the new energy tax system should also consider carbon pricing mechanisms that have been already introduced on the national level, such as Fuel Emissions Trading Act in Germany (BEHG). Finally, a new energy tax system may be accompanied by tax repayment mechanisms that will encourage companies to invest in innovative climate-neutral technologies and introduce measures for better energy efficiency.

2. Scope of the Directive: exclude mineralogical processes and industrial waste incineration

The scope of the current directive will be enlarged by the exclusion of the most national exemptions and rate reductions. In particular, the planned taxation of mineralogical processes will increase the cost burden for a variety of energy-intensive businesses and industrial park operators. In general, VIK welcomes that chemical reduction, electrolytic and metallurgical processes continue to be exempt from the scope of the directive. However, mineralogical processes are in the same way subject to thermodynamic energy requirements that cannot be reduced. For example, the process emissions resulting from lime production are difficult to avoid under the current state of technology. Nevertheless, lime is a key element for industrial value chains, therefore these processes should be exempted from the scope of ETD.

Against this background, it seems arbitrary that the EU-Commission has selected only mineralogical processes to be included in the scope of the current proposal. Taxing this energy demand has no steering effect and consequently increases production costs for European manufacturers, thereby negatively affecting their international competitiveness. Furthermore, rising energy and electricity prices will weaken investment security, increase operational costs and withdraw financial capital which is urgently needed for private investments in decarbonisation technologies.

VIK appreciates the tax exemptions for energy products used for purposes other than as motor/heating fuels and so-called dual-use of energy products (see Art. 3 of the proposal): when it is used both as heating fuel and for purposes other than as motor and heating fuel; the use of energy products and electricity for chemical reduction as well as in electrolytic and metallurgical processes, when energy products are used directly in or to provide a direct energy input to the process.

In addition, special tax frameworks should be introduced for waste use as secondary energy carriers from recycling of raw materials, thermal waste and exhaust air treatment or industrial waste. Thus, for example, the incineration of industrial waste, which is necessary for the treatment of toxic waste compounds, should not lead to additional production costs.

The deployment of incineration plants with combined heat generation should not be penalized similar to simple burning and direct climate-relevant emissions. Special tax reliefs for thermal waste and exhaust air treatment must be re-established because waste can not be categorised as an energy product if it is incinerated for easy disposal.

The energy used for such waste destruction should be completely exempted from taxation. This is particularly important for the manufacturers promoting circular economy production models or for operators that, in accordance with the "energy efficiency first principle", recirculate unavoidable waste gases from the use of feedstock in their production into combustion processes and thus avoid additional fuel input, as the waste gas would not be allowed to be released into the atmosphere without thermal treatment anyway.

In general, to guarantee more planning security, the tax exemptions for industrial purposes should be approved by default and not be connected to the EU State Aid Rules.

3. Intersecting regulations and carbon tax duplication measures should be avoided

The ETD should consider a policy coherence among all carbon-related policy instruments (including ETS-Directive (Directive (EU) 2018/410), ETS-State Aid Guidelines (2020/C 317/04), Renewable Energy Directive (2018/2001), Energy Efficiency Directive (2018/2002), Guidelines on State aid for environmental protection and energy 2014-2020 (2014/C 200/01)) and be applied in a harmonized way without possible intersecting regulations. In this context, unification and clarification of climate-related legislation would be welcomed. Additionally, an alignment between the ETD, the CEEAG and the EU-ETS should not lead to double carbon taxation and competitive disadvantages (in case if the EU-Commission will introduce taxation of energy products based on the energy content and environmental performance).

The optional tax exemptions envisaged in the revised version of ETD should be considered as approved by default and not be treated in compliance with revised State Aid Rules. The absence of such a regulation will endanger the current tax capping system in Germany. It cannot be prolonged after the expiration of the present regulation, because the needed State aid measures will no longer be provided.

The avoidance of double energy tax regulations is essential if we consider European and National Energy Emissions Trading Systems. As Germany introduced a national ETS for heating and transport fuels in 2021, the double regulations of GHG-pricing will not provide a considerable added value. In case if the current ETD proposal will be introduced in the future, it is important to guarantee tax exemptions for companies, if they are falling under the regulation of national ETS.

4. Reconsidering economic risks for a planned increase of minimum tax rates for energy products/electricity and their annual indexation

The increased minimum tariffs on energy products and electricity, which will be indexed¹ annually, and ranking of energy products due to their carbon content will cause negative effects for companies, as for example, an increase in energy prices. To meet the climate targets, the EU member-states need a reliable tax treatment framework for the further development of sustainable innovative technologies and products. Another risk is connected with inflation which is difficult to predict precisely due to future various economic factors, as for example, the current corona

¹ The indexation will be based on the annual Eurostat consumer prices

pandemic. Additionally, the increase of energy taxes will endanger the required market-based industry investments for the green transition. For example, electrification of industrial production requires immense long-term investment strategies and is difficult to achieve without favourable energy tax treatment. In addition, and to maintain the competitiveness of industrial manufacturers and site operators, we appeal to a reduction of electricity taxes in Germany in accordance with European minimum tax rates which are defined in the ETD.

The minimum tax rates for natural gas, used in Combined Heat and Power (CHP) installations, will be raised (due to the current ETD-draft) from 0.15 EUR/GJ to 0.6 EUR/GJ starting by 2023, by 2033 this amount will be increased from 0.15 EUR/GJ to 0.9 EUR/GJ. For the production of fertilizers and other industrial chemicals, the increased minimum tax rates will not be economically viable and acceptable. If we take into account profit forecasts for future years, energy tax rates for natural gas, which are extremely increased, will practically mean an increase of net burden on earnings by 30% starting from 2023 and approximately by 50% starting from 2033. A loss-making is also influenced by other national and European climate-related regulations (e.g. BEHG, CBAM). If we take an example of one significant company in Germany, the increased energy tax rates for CHP-installations can endanger almost a half billion of green investments planned for environmental protection and climate-friendly technologies. A further successful economic development of such companies, as well as thousand related jobs, will be put at risk. In this sense, the addressed amendments will not be approved by chemical industry associations.

The lowest minimum level of taxation of 0.15 EUR/GJ should also apply to sustainable biogas, including biogas produced from food crops and feed co-products incurring in the production process and sustainable solid products, falling within CN code 4401 (solid renewable fuels in particular for high-efficient industrial use). The mentioned sustainable biogas and solid renewable fuels are generated without land-use change impact and will constitute a significant step towards zero GHG emissions. Those heating fuels are especially important for industrial sectors in rural areas to achieve net zero emissions due to a lack of sufficient energy infrastructure capacity. A discrete evaluation is needed concerning taxation of self-produced and self-used biomass fuels in the food industry (from coproduct, by-product, intermediates and waste from the processing of agricultural raw material). In particular, biogas from wastewater, waste or production residues should not be stymied by additional requirements hindering the use of mentioned sustainable energy products that open up a chance to reduce carbon emissions from fossil fuels. In opposition to this, the Commission's proposal to revise RED II seems to extend its sustainability requirements to additional use of sewage gas produced by on-site wastewater treatment plants. This leads to disadvantages on the level of energy taxation as well. In our view, the mentioned fuels should be fully exempted from energy taxation, as their implemented use (e.g. biogas from wastewater, waste or production residues) would be endangered disproportionately by additional requirements (sustainability certifications as defined by Article 29 of Renewable Energy Directive (EU) 2018/2001), which obviously will not contribute to environmental goals. Without such certification, those energy products will be taxed as natural gas. That way, the use of biomass leftovers (which potentially substitute fossil fuels) for energy generation would be hindered. Therefore, self-produced biomass for internal use should be excluded from the scope of ETD, for instance, by an exemption included in Article 3 of the current proposal.

5. Introduction of reliable regulatory conditions for practical applicability of the targeted tax reductions in favour of energy-intensive businesses²

VIK supports the exemptions for energy products and electricity used to produce electricity defined in Article 13 of the current proposal. We also support special tax treatment for products below the minimum tax rates, in case if they are used to produce electricity with a clear ambition to meet environmental policy targets. VIK also welcomes targeted tax reductions for energy-intensive industries (Art. 18) if they are at risk of competitiveness loss or if they introduce measures aiming to achieve environmental protection objectives and improvements in energy efficiency. The mentioned tax exemptions should also be applicable for industrial park operators.

At the same time, the ETD proposal should ensure reliable legislative conditions for practical applicability of the above mentioned targeted tax reductions in favour of energy-intensive businesses and industrial park operators. As previously mentioned, a possibility for the future application of the current energy tax capping system³ in Germany should not be put at risk or be complicated by additional regulations. In the context of a discussed succession plan for the energy tax capping system in Germany, important is to avoid further disadvantages for chemical parks compared with single industrial locations belonging to a particular sector. At least a proportional amount of net energy (heating, cooling and compressed air) should be relieved from energy and electricity taxation if they are belonging to the companies regulated and entitled to the EEG's special equalisation scheme (§ 64 EEG BesAR). At least within the proposed supply constellation, primary and secondary energy sources (natural gas, coal and electricity) must be exempted from the energy taxation, not depending on the way, how this useful energy was generated: by companies (listed in § 64 EEG BesAR) or by the chemical park operator.

6. Introduction of low tax rates for alternative fuels

VIK generally supports the EU Commission's initiative on the lowest tax rates for alternative fuels and low-carbon hydrogen (0.15 EUR/GJ) for a transitional period of 10 years (see Art.16). A special tax framework and the possibility to refund the taxes will support investments in sustainable fuels and the promotion of renewable energies.

Finally, we recommend an application of the lowest minimum rate of taxation (0.15 EUR/GJ) to sustainable biofuels produced from food and feed crops as defined in Renewable Energy Directive (EU) 2018/2001. The mentioned sustainable biofuels contribute substantially to the net-zero emissions target in the mobility sector with no impact on land-use change. Therefore, an increase to the highest tariff of 10.75 EUR/GJ or 0.9 EUR/GJ respectively (as for fossil motor fuels), would be disproportionate due to their better environmental performance.

VIK is the association of industrial energy consumers in Germany. For more than 70 years VIK represents in his role as an industry-wide association the interests of companies from e.g. aluminium, chemicals, glass, paper, steel and cement. VIK advises its members on all energy and energy-related environmental issues.

² See Art. 13 and Art.18

³ Energie- und Stromsteuer-Spitzenausgleich