

# Energy Taxation Directive

Fields marked with \* are mandatory.

## Introduction

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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

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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

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\* 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:

Transparency Register number:

\* 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

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

Comment:

The minimum levels of taxation are rather low, hence they do not undermine the competitiveness of industry, but on the other hand, do not contribute to the protection of the environment. We support a more CO2 driven taxation. The taxation of electricity as transport fuel is missing in Annex I (while it is included as heating fuel).

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

The new ETD should indeed be better suited to reflect the new European energy and climate ambition in line with the EU's 2030 Energy and Climate Framework as well as the Paris Agreement, notably by reflecting on the environmental performance of energy sources.

The introduction of a CO2 Component in the Energy Directive Taxation as proposed by European Commission in 2011 should be implemented. This CO2 component should be calculated on the basis of objective criteria, allowing for equal treatment of different energy sources.

Furthermore, the future ETD should ensure better allocation of the charges to ensure that taxes and levies that are not related to energy are not included in energy taxes. Such improvement would reduce the overall costs borne by consumers. Otherwise it could endanger the development of electrification, recognized as a major tool for decarbonisation, as it artificially increase electricity prices while making other forms of energy more competitive. Thus, EU member states should limit the tax burden on the electricity sector and apply only taxes and levies that directly relate to electricity.

# 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:

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 checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
* Legal certainty for economic operators, particularly in cross-border situations	<input type="radio"/>	<input checked="" type="radio"/>	<input 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 checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Other (please explain):

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

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	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 type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" 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 type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" 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 type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" 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 type="radio"/>	<input checked="" 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 type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
* Energy products and electricity used for agricultural, horticultural or piscicultural works and in forestry (Article 15(3))	<input type="radio"/>	<input checked="" 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 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"/>

Please specify:

The new ETD should aim to ensure a level playing field in terms of taxation between energy sources. In principle, cleaner and renewable fuels should be favoured.

Moreover, there is a need for coordination and integrated analysis between the ETD and EU-ETS in order to have a harmonized and holistic framework.

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



Please explain:

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?

- A possible review of the ETD should take account of the current energy transition and the overall climate performance of the different technologies and energies.
- New developments should also be taken into consideration in the ETD review, such as storage, whose development will be key to mitigate climate change. In order to avoid any abusive application of the ETD, it should explicitly be stated that electricity storage is enhancing the flexibility of the system but cannot be considered as an end-consumption under the ETD. Otherwise this will create an issue of double taxation.
- Need to take corrective actions in order to rectify some of the distortions created by the ETD. One significant side-effect which has been noted since the entry into force of the Directive is that the application of the ETD generates significant unjustified financial losses for the energy businesses. Energy taxes are collected by energy businesses, but are meant to be borne by end-consumers from an economic point of view. As a matter of fact, in situations where the electricity and natural gas taxes invoiced to consumers are unpaid and cannot be recovered from the end-customer, the ETD should allow energy businesses to recover those taxes from Members states, in a similar way as allowed under the VAT-Directive (article 90 of directive 2006/112/EC on the common system of value-added tax). The revision of the ETD should therefore explicitly foresee this essential protection for collecting entities.

## 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?

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

Where Member States nonetheless apply taxes on certain fuels for electricity production for other environmental reasons, this needs to be clearly justified (art. 14.1.a).

## 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:

Lack of harmonisation of energy taxation rates at EU level will impact negatively on the level playing field between not only energies in competition but also Member States.

\* 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:

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\* 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:

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## 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. CO <sub>2</sub> , CH <sub>4</sub> , N <sub>2</sub> O)	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
* Promotion of the use of renewable energy	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

* Increased energy efficiency	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
* Security of energy supply	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
* Energy diversification	<input type="radio"/>	<input type="radio"/>	<input checked="" 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 type="radio"/>	<input checked="" 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

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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

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## Contact

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