

Answers of the European Financial Congress¹ to the questions asked in the European Commission's consultation on the EU framework for taxation of energy products and electricity²

Methodology for preparing the answers

The answers were prepared in the following stages:

Stage 1

A group of experts from the Polish energy, extractive, metallurgical and transport sectors were invited to participate in the survey. They received selected extracts of the consultation paper, the consultation questions and the Energy Taxation Directive 2003/96/EC. The experts were guaranteed anonymity.

Stage 2

The survey project coordinators from the European Financial Congress prepared a draft synthesis of opinions submitted by the experts. The draft synthesis was sent to the experts participating in the survey with the request to mark the answers they did not agree with and which should be modified.

Stage 3

On the basis of the responses received, the final version of the European Financial Congress' answers was prepared.

¹ European Financial Congress (EFC – www.efcongress.com). The purpose of the EFC is to promote debate on how to ensure the financial security and sustainable development of the European Union and Poland.

² https://ec.europa.eu/info/consultations/evaluation-eu-framework-taxation-energy-products-and-electricity_en

Answers of the European Financial Congress

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
Creating a common energy market to ensure the smooth functioning of the internal market		X		
Protecting the environment and achieving international commitments in that regard			X	
Safeguarding and improving the competitiveness of EU companies		X		

Comment:

Among the areas listed in the directive, the energy market and the competitiveness of enterprises (especially inside the EU) are of utmost importance to us.

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

The directive could promote the local use of energy obtained from small, distributed renewable energy sources.

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 **X**
- Not at all

Please explain:

Electricity in Poland is subject to taxation with excise tax (PLN 20/MWh), a level much higher than the minimum stated in the directive (EUR 0.5-1/MWh); therefore, it appears that the directive does not affect it very much.

The directive lays down the minimum tax rates. No maximum tax rates are defined, leading to a large variation in rates of, for example, electricity in different EU countries. Member States set rates according to their own fiscal policy. In addition, they use varying VAT rates, leading to further disparity of final prices for purchasers.

In your view, what are the benefits of having the minimum levels of taxation set at the EU- rather than national level?

	Strong benefits	Some benefits	Limited benefits	No benefits
Limited race to the bottom in taxation rates		X		
Legal certainty for economic operators, particularly in cross-border situations			X	
Transparency of rules		X		
Level playing field between economic operators			X	

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
Differentiated national rates linked to product quality (Article 5)		X		
Differentiated national rates depending on quantitative consumption levels for electricity and energy products used for heating purposes (Article 5)		X		
Differentiated national rates for local public passenger transport (including taxis), waste collection, armed forces and public administration, disabled people, ambulances (Article 5)		X		
Differentiated national rates between business and non-business use for heating fuels, heating gas oil and electricity (Article 5)		X		

Differentiated national rates between commercial and non-commercial use of gas oil used as propellant (Article 7(2))		X		
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))		X		
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))			X	

Other (please explain):

The only factor important for manufacturers of energy in hydroelectric plants is the variation of rates (exemption from excise tax) resulting from Article 14(1)(a). In this case, however, the difficulty lies in legal provisions which are complex and obscure for small enterprises as well as the overabundance of procedures (obligation to maintain an energy record, differentiate energy consumed for the manufacturer's own needs and energy required to maintain manufacturing processes, and file excise tax declarations despite the exemption).

A note concerning Article 14(2):

The Polish legislator has, unfortunately, implemented the "private pleasure-flying" term used in the directive in a peculiar manner, translating it as "recreational", and as a result a flight taken to meet business partners is considered by tax authorities as recreational.

As a general rule, judicial decisions and interpretations issued by the Minister of Finance took the line of allowing exemption from excise tax only when air carriage of persons or goods is used solely to provide aviation services for consideration.

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
Energy products and electricity used to produce electricity and electricity used to maintain the ability to produce electricity (Article 14(1)(a))		X		
Energy products supplied for use as fuel for the purpose of air navigation other than in private pleasure-flying (Article 14(1)(b))		X		

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))		X		
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))		X		
Electricity (Article 15(1)(b))		X		
Refund to the producer of some or all of tax paid by consumers on electricity produced from products specified in Article 15(1)(b)	X			
Energy products and electricity used for agricultural, horticultural or piscicultural works and in forestry (Article 15(3))		X		
Taxable products from biomass (Article 16)		X		
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))		X		
Other				

Please specify:

A proposal for the directive to apply the minimum tax rate or grant an exemption to energy products used in technology tests of new manufacturing units.

In Polish law, the following transactions with electricity are subject to taxation with excise tax:

- 1) intra-community acquisition of electricity by an end consumer;
- 2) sale of electricity to an end consumer within the territory of the country, including by an entity that produced that electricity and does not hold a concession for generation, transmission, distribution, or turnover of electricity within the meaning of the provisions of the Energy Law Act of 10 April 1997;
- 3) consumption of electricity by an entity holding the concession referred to in subpoint 2);
- 4) consumption of electricity by an entity that produced that electricity and does not hold the concession referred to in subpoint 2);
- 5) import of electricity by an end consumer;
- 6) consumption of electricity by an end consumer, if excise duty for that electricity was not paid in the amount due and the entity who sold that electricity to the end consumer cannot be determined.

At the same time, electricity generated from renewable sources is exempted from excise duty based on a document confirming cancellation of the certificate of origin of energy within the meaning of the provisions of the Energy Law Act or the Renewable Energy Sources Act of 20 February 2015.

Therefore, energy manufacturers who resell the manufactured energy to an enterprise that trades in energy for further resale are subject to tax duty only when such energy is consumed for their own purposes. Manufacturers with installations whose total generation units capacity is less than 1 MW are exempted from the tax. Such manufacturers will not be affected by exempting energy manufactured from renewable sources from the excise tax, as they do not sell energy to end users.

In cases where energy manufactured from renewable sources is sold by the manufacturer directly to the end user, the exemption is obtained in exchange for cancellation of certificates which are a form of support for the manufacturer, and therefore the exemption is illusory, as it can only occur at the cost of limiting support obtained from certificates of origin.

On the other hand, a manufacturer not subscribing to the certificates of origin system and selling energy directly to the end user is not subject to excise tax exemption for manufacturing energy from a renewable source.

In this sense, the exemptions allowed in the directive have not been implemented in Polish law for the benefit of the energy manufacturers.

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
Tax revenues		X		
Transport		X		
Agriculture		X		
Energy		X		
Industry		X		
Environment		X		
Competitiveness		X		
Other				

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
Tax revenues		X		
Transport		X		
Agriculture		X		
Energy	X			
Industry	X			
Environment		X		
Competitiveness		X		
Other				

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?

The directive does not sufficiently address the impact of energy taxation as a price-driving factor on the risk of outflow of energy-intensive industries from the EU. In case of the EU environmental policy, such outflow has been noticed in Directive 2003/87/EC with respect to CO2 emissions (the so-called *carbon leakage*). This aspect should be compulsorily considered (i.e. at the stage of using/implementing the directive) as regards the freedom given to Member States in setting the electricity tax rates and granting tax exemptions to energy-intensive industries.

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 problem in Poland is that exemptions and reductions listed in Article 15(1)(b) are not used in a way that would actually encourage manufacturers of energy from renewable sources to invest in this area or grant them a definite tax relief.

Even though dispersed manufacturing sources undoubtedly have a positive impact on the environment, the directive does not promote such solutions in any way. In our opinion, one of the factors stimulating the establishment and use of such manufacturing units should be tax exemptions for electricity obtained from the so-called autoproduction (i.e. energy manufactured and consumed by the same entity). In this respect, we consider the categories listed in the directive (in Article 15 among others) as not sufficient to promote pro-environmental solutions.

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 resourceefficient, 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
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))	X			
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))	X			
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))	X			
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))	X			
Other				

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 **X**
- To a limited extent
- Not at all

Please explain:

The directive lays down the minimum tax rates. No maximum tax rates are defined, leading to a large variation in rates of, for example, electricity in different EU countries.

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 **X**
- To a limited extent
- Not at all

Please explain:

The impact is mostly negative because in non-EU countries where the tax is not levied the prices may be lower.

Instead of optional exemptions and lower rates which are used in the vast majority of cases, mandatory exemptions should be introduced to make energy taxation more uniform.

In your view, what are the main obstacles to the competitiveness of EU companies created by the Energy Taxation Directive?

- Obstacles to innovation
- Obstacles to procurement
- Obstacles to production **X**
- Obstacles to mobility
- Other (please specify)

Please explain:

The minimum tax rates coupled with the lack of maximum rates increase uncertainty and have a negative impact on investment decisions made by enterprises.

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
Reduction of greenhouse gas emissions (e.g. CO ₂ , CH ₄ , N ₂ O)		X		
Promotion of the use of renewable energy	X			
Increased energy efficiency		X		
Security of energy supply			X	
Energy diversification		X		
Reduction of other gases (e.g. ammonia NH ₃ , SO ₂ , particulate matter)		X		
Other				

Other (please specify):

The directive stimulates introducing energy savings and innovative solutions in this respect. Reduced emissions of gases are a side effect.

Other comments::

Mandatory exemptions from the tax regime for air and sea transport (Article 14(1)(b) and (c)) have a negative impact on the environment and prevent balanced competitive conditions for all modes of transport. Mandatory exemptions should be abolished and the EU should, where necessary, renegotiate the relevant international agreements (such as the Chicago Convention for air transport).

An optional exemption from the tax regime for energy products and energy used for carriage of goods and passengers via rail, metro, tram and trolleybus (Article 15(1)(e)) should be maintained to ensure support for environmentally friendly modes of transport. Article 15(1)(e) of Directive 2003/96/EC safeguards the interests of railway goods carriers by enabling them to obtain partial or full tax exemption. A maximum

solution would be to impose an obligation, and not just the ability, to grant such exemption on Member States.

The EU-level tax regime should generate incentives for rail transport as cleaner and more competitive than road transport due to low CO₂ emissions, low fuel consumption to carried mass ratio, and no emission of dust caused by the wear of tires and asphalt surfaces. The increase of prices of energy and fuel is related to rail transport becoming less affordable. Hence, any support (including lower taxes on energy and fuel used in rail transport) that contributes to the development of this sector of economy helps protect the environment.

While tax matters are of essential importance for prices of electricity for end users, national energy regulators have not yet cooperated on the international scale to conduct their own studies on the impact of taxes on consumer energy prices and the operation of retail markets. In this respect, regulators used documents provided by the European Commission. However, as retail energy markets and consumer affairs increase in importance, as evidenced by the European Commission's Clean Energy Package, tax matters may become an area closely followed by national energy regulators. The results of the consultation should contribute to better understanding of the specifics of retail energy markets and consumer affairs.