

EURIMA Response to the European Commission's proposal to revise the Energy Taxation Directive (ETD)

Ensuring a level playing field in the single market

Eurima welcomes the Commission's initiative to align energy taxation rules with the Union's long-term energy and climate targets, recognising that in order to fulfil this objective, certain national tax exemptions should be rationalised to encourage decarbonisation efforts, whilst maintaining a level playing field.

Unfortunately, certain provisions of the current ETD undermine the level playing field in a number of sectors due to the ambiguity of the language used in Art.3 (formerly Art.2), which leads to varying national interpretations on which sectors fall within the scope of the Directive. Eurima therefore recommends addressing these legal uncertainties as part of the ETD revision. Given the proposed expansion of industrial processes to be covered by the revised ETD, it is now more important than ever to clarify definitions used in Article 3 to avoid distortion of a level playing field in the industries that will fall under the scope of the Directive.

Clarifying Article 3 provisions on dual-use

The proposal for a new Article 3 expands the scope of the Directive by limiting tax exemptions in a large number of industries only to process energy consumption with "dual use" rather than all process energy. The mineral wool industry would be affected by this change, as it falls under the definition of 'mineralogical processes' – a broad group of industries including cement, lime, glass, ceramics and more.

However, the proposal does not clarify how the dual-use exemption is to be determined: a question that has previously resulted in significant discrepancies amongst Member States, thereby distorting the EU's single market. Even within a single Member State, the ambiguous definition has led to long-standing disagreements between national officials and industrial actors, which in some cases could only be resolved with the intervention of the European Court of Justice (CJEU). The Commission's Impact Assessment acknowledges the need to align the terminology of the ETD with case-law by the CJEU, specifically referencing "*definitions of the uses which are out of the scope – mineralogical and metallurgical processes*" as one area where further clarity is needed¹.

In the case of mineral wool production, a significant portion of energy consumed in our plants is used as direct input to melting furnaces – a process that also leads to a chemical reduction needed for the final product. According to the proposed Article 3, such process energy qualifies as "dual use". However, without a clear definition for what constitutes energy used for "chemical reduction", national interpretations will differ, thereby undermining the level playing field in the EU mineral wool sector.

¹ European Commission (2021) Proposal for a COUNCIL DIRECTIVE restructuring the Union framework for the taxation of energy products and electricity ([available here](#))

Other mineralogical sectors, such as the brick and tile industry, also involve processes that lead to chemical reduction, and all mineralogical sectors share the need for direct input of process energy that cannot be reduced. This makes mineralogical processes no different to electrolytic or metallurgical processes — both of which have been left out of scope in the Commission's proposal.

Eurima recommendations

Given that mineralogical processes are subject to the same type of thermodynamic energy requirements as electrolytic and metallurgical processes, the Energy Taxation Directive should provide equal treatment to all three sectors. Concretely, Eurima recommends amending the text of Article 3(1) as follows:

*"This Directive shall not apply to the following... ..dual use of energy products. An energy product has a dual use when it is used both as heating fuel and for purposes other than as motor fuel and heating fuel. The use of energy products for chemical reduction and in electrolytic **processes, mineralogical processes** and metallurgical processes, when energy products are used directly in or to provide a direct energy input to the process, or their consumption is connected to the process, shall be regarded as dual use."*

In addition, Eurima recommends that the definition of dual use, including chemical reduction, and in particular its scope, is clearly spelled out in the new Article 3, so that uniform definitions and conditions can be ensured in all EU countries when implementing the Directive in national legal systems.