

## “FIT FOR 55” PACKAGE

# AFEP POSITION ON THE PROPOSED REVISION OF THE DIRECTIVES ON ENERGY TAXATION (ETD), RENEWABLE ENERGY (RED) AND ENERGY EFFICIENCY (EED)

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### 1. [Energy Taxation Directive \(ETD\)](#)

- AFEP (French Association of Large Companies) member companies **welcome the following points of the proposal**:
  - **Application of the tax rate based on the energy content** and no longer on power, mass or volume.
  - **Maintaining of (i) the dual use of energy** (Article 3) **outside the scope of taxation** and (ii) the **possibility for Member States to grant tax reductions for energy intensive companies** (Article 18), in view of ensuring **business competitiveness over foreign competitors**.
  - **Improved access to decarbonised energy at a competitive cost** by allowing Member States to grant tax exemptions or reductions on renewable energy sources (new Article 16).
  - **Support for "green" hydrogen**; however, a proportionate approach to green and low-carbon hydrogen should be ensured in the gas package adopted in mid-December 2021, considering their cost and availability during the transition. A similar or very close taxation rate between green hydrogen and low carbon hydrogen appears indispensable ten years after the entry into force of the Directive when "low carbon" hydrogen will become particularly important.
- **Important improvements are expected on the following points**:
  - In order to ensure the continued competitiveness of European companies, it is important to **reconsider the removal of exemptions for mineralogical companies**, as it does not appear to be founded on clear arguments.
  - For the same reason, it is important to **maintain the distinction between professional and non-professional uses**. Indeed, it is important to maintain more attractive rates for professionals in order to avoid a negative impact on their competitiveness, which would not be possible by aligning professional and non-professional uses.
  - The need to **better integrate the use of certain necessary energies during the transition phase** in view of the objectives for 2030 and beyond:
    - need for **progressivity of rates on fossil fuels for energy-intensive companies engaged in transition plans**;
    - need for greater **progressivity of rates on natural gas** consumed and natural gas used for the production of electricity in power plants or cogeneration; at this stage, the proposal for a Directive now provides that Member States can tax the natural gas used for the production of electricity (whereas it was exempt until now), without any guarantee of progressivity in this case (Article 13, paragraph 2) ;

- the favourable regimes for natural gas fuel should not be removed in view of its contribution to the decarbonisation of the transport sector (especially heavy goods vehicles);
  - need for more attractive rates for some renewable energy sources, in particular biogas/biomethane; indeed, the current rates seem too high to stimulate the consumption of these energies.
- Several points need to be further clarified:
    - The shift from a system of mandatory exemptions to an optional system for Member States will create uncertainty in triggering investments (depending on use or origin). For example, as mentioned above, Article 13(2) of the proposal on the production of electricity from natural gas now gives Member States the option of waiving the tax exemption for this input. It should rather aim for a uniform minimum level of taxation throughout the EU.
    - Consistency of product category definitions should be ensured between the revision of the Directives on Energy Taxation, Renewable Energy and EU-ETS (e.g., "hydrocarbons (Art 2, 3 §3), sustainable advanced biogas, non-sustainable biogas, sustainable food and feed crop biogas").
    - Taxation of mixtures (e.g., hydrogen, biomethane - natural gas, etc.) seems insufficiently defined. Thus, there is no indication whether they would be identified by Member States, which would present an important risk of fragmentation, or at EU level. Furthermore, it is not specified whether the taxation methods would be "on an actual basis" with an analysis and a physical control of the actual rates of incorporation, or on a "flat rate" based on the maximum rates of incorporation provided for by the administrative specifications of the Member States. These procedures should be specified in the proposal by aiming for harmonisation between the Member States and by specifying the "actual" or "flat-rate" methods applicable according to the components of the mixture, with a view to optimising costs and feasibility. In the case of gas mixtures, a separate tax treatment should be applied for each component (e.g., a mixture of injected biomethane and natural gas).
    - Taxation modalities should be clarified for products under CN codes 4401 and 4402 (mainly wood biomass) used as heating fuel for installations above 5 MW (in parallel with RED III).
    - Customs nomenclatures are essential for determining the minimum levels of taxation applicable by product and not by product category, which is too imprecise. Making these nomenclatures available in the annexes to the Directive would provide greater clarity for businesses.
    - The provision which would automatically trigger the classification of a product delivered as fuel if the supplier "*is aware, or should reasonably be aware, that the recipient intends to use the products as heating fuel or motor fuel*" should be deleted, given the difficulty for the supplier to ascertain of such use by its customers. Otherwise, it should be specified and circumscribed to avoid creating significant legal uncertainty.
    - Predictability on the evolution of rates should be ensured beyond the 10-year period starting from the date of entry into force of the proposal for Sustainable Aviation Fuels (SAF) and the maritime sector, in order to provide better visibility and thus stimulate medium to long-term investments. In this respect, a zero rate after the above-mentioned 10-year period should be maintained in particular for Sustainable Aviation Fuels (SAF).
    - As the definition of "vulnerable household" differs a lot from one Member States to the other, it should not be defined uniformly by the Directive, but should be defined by each Member State.
    - An indexation of the rates appears to be more appropriate every 3 to 5 years rather than annually in order to avoid an excessive administrative burden on companies.

- Besides, the timetable for implementing the Directive seems unrealistic as the implementation expected in 2023 seems far too ambitious compared to the timeframe for negotiating the Directive itself and the delegated acts. An entry into force of the provisions in 2025 appears more realistic for the Member States and companies to implement the revision.
- Finally, AFEP member companies are aware of the difficulty of reaching a unanimous agreement on this issue among Member States, but they insist on the benefits of this reform in order to best meet the objectives of the energy and climate transition.

## 2. Renewable Energy Directive (RED)

Businesses welcome the provisions of the proposed revision, in particular the increased target of 40% in 2030, while stressing that it adds a new layer of complexity with targets by sectors of use. However, the proposal appears relevant in order to encourage the development of power purchase agreements (PPAs) from renewable energy sources.

Member companies recall their attachment to the principle of technological neutrality with regard to the objective pursued and underline the need for competitive solutions in a context of heterogeneous efforts by the States Parties to the Paris Agreement for its implementation. They support the Commission's proposal to harmonise and improve the traceability of RFNBOs (Renewable Fuels of Non-Biological Origin) with a database allowing the traceability of their material balance, as well as the green electricity credit mechanism.

The main areas for improvement at this stage are:

- The proposal provides for a significant use of green hydrogen by industrial installations by 2030 (new Article 22a), without however establishing a link with the use of low-carbon hydrogen, which is to be encouraged in the framework of the European Commission's next "gas" package. The use of green hydrogen and low-carbon hydrogen should be coordinated, taking into account the availability of these energies and their costs for industrial users, throughout the energy transition.
- The list of eligible feedstocks in Annex IX for biogas and biofuel production should be explicitly extended to include all sustainable waste and residues, in order to meet the ambitious targets of the transport sector.
- The valorisation of biogas/biomethane solutions during the transition should be improved.
- Specifications of additionality rules for renewable hydrogen appear excessive. The compliance costs will increase the price of this energy and may hinder its development.
- The centralisation and harmonisation of the "guarantees of origin" (GOs) is relevant. These GOs should be the main tool used by this Directive to prove the achievement of the planned targets. However, it appears at this stage that the GO system proposed at European level would not be compatible with the GO system set up at national level.
- An increased valorisation of CO<sub>2</sub> capture, storage and utilisation (CCU) is essential.

For the aviation sector, the proposed targets for the use of advanced biofuels and RFNBOs in the transport sector (Article 25) should be sufficiently ambitious to support the production and use of these fuels, in particular synthetic fuels (or e-fuels), which are the most promising in terms of reducing greenhouse gases emissions for aviation. However, these targets will have to be adapted according to the evolution of the SAF incorporation trajectory defined in the proposed Refuel EU Aviation Regulation and according to the targets defined in the proposed Fuel EU Maritime Regulation. The strengthening of the 1.2 multiplier for aviation fuels should be considered in order to further promote the use of these fuels in this sector (Article 27). A diversification of available feedstocks for aviation should be envisaged through an extension of Annex IX of the Directive while respecting strict sustainability criteria. Any modification of the

sustainability criteria included in the Directive should take into account the work of the ICAO with a view to harmonising these criteria at international level.

Furthermore, companies in the **shipping sector** stress, on the occasion of this new legislative proposal, **the importance of the proposal for a Regulation implementing RED II published by the Commission one week after the "Fit for 55 package"**. This proposal would impose a **distribution/delivery circuit of their own on shipping operators** to guarantee the traceability of alternative energy molecules, including biomethane. **Such an orientation does not seem feasible from a technical and economic point of view**. Indeed, it would be necessary either to transport these molecules by road from their place of production to the bunkering sites, which would imply the mobilisation of numerous tanker trucks, or to build liquefaction infrastructures connected to the liquefied natural gas terminals in the ports, **which would require two redundant investments in the same place**: on the one hand, a natural gas liquefaction terminal gasifying methane for injection into the network, and on the other hand, a liquefaction plant to carry out the reverse operation. **As a replacement, it is proposed that a traceability mechanism based on production certificates accessible directly to maritime transport stakeholders be introduced**. It would be based on an **equivalence** between support for the production of biogas and its valorisation for the decarbonisation of the maritime sector.

### 3. Energy Efficiency Directive (EED)

Since the inception of the Directive, member companies have **questioned the rationale for maintaining targets in terms of absolute energy consumption reduction rather than energy intensity improvement**. This absolute value approach risks **slowing down the deployment of decarbonisation solutions and may be an obstacle** to the implementation of electricity storage solutions. It is likely to **penalise EU industrial companies** that have made substantial progress in energy intensity but have experienced growth in their activity.

The adoption of energy efficiency improvement targets at the level of public actors is welcomed by companies.

They believe that the objective of reducing CO<sub>2</sub> emissions should be given priority in cases where there is an **antagonism between CO<sub>2</sub> reduction and energy consumption** (e.g. switching from gas boilers to biomass boilers which reduce CO<sub>2</sub> emissions but are less energy efficient).

Businesses are asking for the "energy efficiency first" principle to be better explained and to take these situations into account.

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#### About AFEP

Since 1982, Afep brings together large companies operating in France. The Association, based in Paris and Brussels, aims to foster a business-friendly environment and to present the company members' vision to French public authorities, European institutions and international organisations. Restoring business competitiveness to achieve growth and sustainable employment in Europe and tackle the challenges of globalisation is Afep's core priority. Afep has around 110 members. More than 8 million people are employed by Afep companies and their annual combined turnover amounts to €2,600 billion.

Afep is involved in drafting cross-sectoral legislation, at French and European level, in the following areas: economy, taxation, company law and corporate governance, corporate finance and financial markets, competition, intellectual property and consumer affairs, labour law and social protection, environment and energy, corporate social responsibility and trade.

#### Contact:

Nicolas Boquet / [fn.boquet@afep.com](mailto:fn.boquet@afep.com)

Laetitia de la Rocque / [l.de.la.rocque@afep.com](mailto:l.de.la.rocque@afep.com)

Amina Tarmil / [a.tarmil@afep.com](mailto:a.tarmil@afep.com)

Justine Richard-Morin / [j.richard-morin@afep.com](mailto:j.richard-morin@afep.com)