Anna Wallentin
Anna.wallentin@energigas.se

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The Commission's proposal for revision of the Energy Tax Directive

The Swedish Gas Association – Energigas Sverige – welcomes the fact that the EU is now taking an ambitious holistic approach to climate policy. The new climate package "Fit for 55" is an important step in reducing emissions by at least 55 percent by 2030, and achieving climate neutrality by 2050 - two important goals that we fully support and stand behind.

General comments

We welcome the position taken in "Fit for 55" that regulations and directives should work better together. This is a prerequisite of effective regulation and for capitalising on the opportunities that currently exist to reach our goals. It is, however, a challenge that so many directives are being changed at the same time while also referring to each other. An amendment made, for example, as part of the ongoing revision of the Renewable Energy Directive[1] may completely alter the basis for the proposed Energy Tax Directive. A deeper analysis of the combined measures would have been desirable, both to assess the aggregate effect, but also to understand which methods would be most effective in achieving the climate package's goals.

The Swedish Gas Association welcomes a review of the so-called Energy Tax Directive[2] (ETD). The current ETD is an outdated directive from 2003 that does not reflect the EU's climate goals.

It is clear that, with the new proposal, the Commission aims to increase the share of fuels derived from biomass or other renewable sources such as biogas, bioLPG and renewable fuels of non-biological origin. The Swedish Gas Association is positive about this. However, it is important to note that the proposed definition of biogas directly refers to the definition provided in the Renewable Energy Directive, which is "biogas means gaseous fuels produced from biomass". The term 'biogas' thus includes bioLPG and hydrogen gas derived from biogas or various types of biomass. It is important that this definition is not altered by revision of the Renewable Energy Directive.

In the current ETD, no link is made between the minimum tax rates for fuels and their energy content or environmental impact. Instead, biofuels and biomass are taxed on the same level as their equivalent fossil fuels, which counteracts the transition to renewable energy. Neither have the rules kept pace with the development of alternatives fuels, such as hydrogen. Additionally, the true value of the minimum tax rates determined in the Directive have declined over time, because they have not been indexed against inflation. The Swedish Gas Association agrees with the Commission that change is necessary and supports the new structure and design of the minimum tax rates that the Commission has proposed.

[1] Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources
[2] Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity

It is a positive development that proposed minimum tax rates are based on the energy content and environmental performance of various fuels and electricity, rather than by volume as is most common today. Current rules do not take fuels' energy content into account. Since biofuels generally have lower energy content than fossil fuels, and because their taxation has been set on the same level as their equivalent fossil fuels (and based, in most cases, on volume), this has meant that biofuels have been taxed higher than their fossil fuels equivalents. The Swedish Gas Association is thus pleased to note that the proposed revision will take fuels' energy content into account.

The Swedish Gas Association also agrees that lower minimum tax rates should be introduced for fuels based on biomass or other renewable fuels. This logic enables a favourable taxation of sustainable biogas, bioLPG and renewable hydrogen, without taking the form of state aid. It provides a better basis for long-term and predictable taxation.

Both natural gas and biogas are largely composed of methane and they are often distributed together. The same applies to bioLPG and LPG, and hydrogen from different sources. Co-distribution of this kind will be a major challenge in the taxation system. Bear in mind that methane with three different minimum tax rates probably will be distributed together and blended in the gas grid. The same situation will occur for LPG and hydrogen. It is important that a GO:s (guarantees of origin), mass balance or any other principle is accepted according to the taxation. It is not reasonable or effective to make renewable fuels to be distributed separately – with negative economic and environmental consequences – in order to reach the tax advantages they are entitled to. This must be valid both for distribution and for storage.

The Swedish Gas Association is also, in principle, positive about the proposed categorisation and ranking of fuels, based on their environment performance.

- Division into four categories provides clear steering towards the most preferred fuels, such as advanced biogas and renewable hydrogen. According to the proposal, these fuels should be included in category 4 and thus have the lowest minimum tax rate, which is good.
- It is also positive that low-carbon hydrogen and related fuels will benefit from the lowest minimum tax rate (equal to category 4) for a transition period of ten years and then, after that period, have the same minimum tax rate as category 3 sustainable (but not advanced) biofuels. However, it is important that the definition of 'low-carbon fuels' is clarified to make it clear that hydrogen produced from natural gas with carbon dioxide capture via CCS (carbon capture and storage) or CCU (carbon capture and utilization) is included in this category. The proposal's definition states that "'low-carbon fuels' shall mean low-carbon hydrogen and synthetic gaseous and liquid fuels the energy content of which is derived from low-carbon hydrogen...". Since the Commission – in its 'hydrogen strategy' communication published on 8 July 2020[3] – defines low-carbon hydrogen as " fossil-based hydrogen with carbon capture and electricity-based hydrogen, with significantly reduced full life-cycle greenhouse gas emissions compared to existing hydrogen production.,". We assume that hydrogen produced from natural gas or fossil electricity with carbon dioxide separation via CCS is covered by the definition of "low-carbon fuels" in the proposed ETD. If so, this should be made clearer. Also, hydrogen produced from natural gas or fossil electricity with carbon dioxide separation via CCU should also be included in the definition.
- It should be clarified that the lowest minimum tax rate also is applicable for renewable hydrogen produced from biogas or biomass, and not only for renewable hydrogen from non-biological origin. We believe that hydrogen produced from biogas or biomass is included in the definition of biogas in the Renewable Energy Directive, but that is needed to be clarified.

[3] https://ec.europa.eu/energy/sites/ener/files/hydrogen_strategy.pdf

- The Swedish Gas Association finds it remarkable that electricity is included in category 4 (the category with the lowest minimum tax rate), regardless of how it is produced. We believe that electricity produced from fossil sources should not be included in this category.
- It is positive that biofuels and biomass other than those regarded as 'advanced' are also privileged in comparison to fossil fuels, through their assignation to category 3. However, it is notable that biofuels and biomass derived from feed or food crops are proposed to be taxed at the same level as fossil fuels (category 1) after a transition period of 10 years. The Swedish Gas Association believes that these biofuels should be given favourable tax treatment in the long term, and not just during a transition period.
- Finally, we are pleased to note that the Commission recognises the important role that some fossil fuels – such as natural gas, LPG and fossil hydrogen – can play in paving the way towards renewable alternatives. This is indicated by the lower minimum tax rate (category 2) proposed to apply to transitional fuels for 10 years.

More detailed comments on the proposal for minimum tax level categorisation and structuring can be found under the headline 'Detailed comments,' below.

Detailed comments

Article 2 (6)
In this article, it is stated that if a taxable product is composed of one or more products which are also taxable, taxation shall be determined for each of the components, independently of the CN code under which the product falls as a whole.

The Swedish Gas Association interprets this to mean that the clause shall be applicable to low blended biofuels, which we support. It is important, though, that administratively simple systems are put in place to facilitate the taxation of different gases when they are distributed together (via so-called 'co-distribution'). Such a system is absolutely necessary if existing infrastructure (warehouses, tanks, depots, gas grids, etc.) is to be used to distribute renewable fuels. Biogas can use exactly the same infrastructure as natural gas because they are both composed of methane, but with different origins. In the same way, bioLPG can use exactly the same infrastructure as LPG, and renewable hydrogen the same infrastructure as fossil-derived hydrogen. Clearly, it is totally unreasonable to build parallel systems and infrastructures for the renewable alternatives, now when the fossil fuels have paved the way by bearing the costs of development for existing systems and infrastructures. After all, that is one of the roles for transitional fuel such as natural gas or LPG. During a transition period, it is necessary for existing and developing infrastructure to be used for mixtures of renewables and fossil fuels, without losing the incentives applied to renewable fuels through, for example, lower taxes. It is not reasonable or effective to make renewable fuels to be distributed separately – with negative economic and environmental consequences – in order to reach the tax advantages they are entitled to.

Co-distribution refers to the distribution of multiple taxable gases via gas networks, but it also involves warehouses where different taxable fuels may have been stored together in tanks or similar, pending delivery to consumers or down-stream distributors. In these cases, the warehouse operator will know the exact proportions of the various taxable fuels filled into a tank, but it is not possible to know the exact proportions once the mixed fuel is taken from the tank for delivery. It is therefore of utmost importance, that GO, mass balances or similar are permitted to be used in the distribution of taxable fuels that have been stored or distributed together. This would, for example, apply when bioLPG is stored or distributed together with LPG, when biogas (liquid or gaseous) is stored or distributed together with natural gas (liquid or gaseous) or when renewable, low-carbon and fossil hydrogen are stored or distributed together.

Article 5 (1)
The article states that Member States must replicate the ranking of the various minimum tax level categories in Annex I when implementing national taxation. It needs to be clarified whether the Commission proposes that the member states only should respect the ranking structure or if also the relations between the different ranks must be kept.

The option to distinguish between commercial and non-commercial uses of fuels and electricity as contained in the current ETD has been removed from this article. This means that it will be difficult for Sweden to maintain different tax rates for electricity used in households, and electricity used in industry. The tax on electricity used in households currently is 35.6 öre per kWh. This differs significantly from the tax levied on electricity used in industry, which is 0.6 öre per kWh. If the opportunity to apply different tax rates to electricity for commercial and non-commercial uses is not retained, we foresee a challenge for Sweden in setting taxation rates for these usage categories.

Additionally, the Swedish Gas Association requests clarification about the possibility of applying varying tax rates *within* each category. Can different tax rates (in euros per gigajoule) be imposed on different fuels belonging to the same category, such as biogas, renewable fuels of non-biological origin and electricity, as long as the minimum tax rate is respected?

Article 15
The Swedish Gas Association cannot, at present, take a position with regard to the proposed removal of the exemption from taxation of shipping, and the proposal that shipping within the EU shall now be taxed. However, it is important to note that even though the proposed minimum tax rate for shipping (see Table B in Annex I) is significantly lower than the minimum tax rates for other transport fuels (Table A in Annex I), shipping's high fuel consumption will mean that Europe's shipping industry would be significantly affected. In this context, we want to emphasise the importance of protecting the competitiveness of European shipping, in relation to shipping outside the EU.

It is a positive that the Commission proposes that the minimum tax rate for sustainable biofuels and biogas, low carbon fuels, renewable hydrogen, advanced biofuels and biogas, and electricity for these sectors be set at zero for a transition period of ten years, in order to promote use. We note, however, that this is not referenced in Table B in Annex I. It gives a tax rate of 0.15 euros per gigajoule for these fuels, even at the start of the transition period, 1 January 2023.

The Swedish Gas Association supports the proposal that electricity produced on board ships should be tax-exempt but believes that the exemption should be extended to include not only electricity, but all energy products produced on board ships. This exemption should include, for example, not only electricity produced in fuel cells on board ships, but also the biogas produced from waste on board certain ships.

Article 22
In Article 22 of the proposed revision (Article 21 in the current ETD) it is stated that "*Member States may also consider the consumption of electricity and other energy products not produced within the curtilage of such an establishment and the consumption of energy products and electricity within the curtilage of an establishment producing fuels to be used for generation of electricity as not giving rise to a chargeable event*." This because the electricity will be taxed at a later stage and based on the principle that taxation of energy products should be taxed at only one point. However, the article requires clarification that this logic applies not only to energy products used for the production of electricity, but also to energy products used for the production of other energy products. It should thus clarify that natural gas, biogas (or other biomass) or electricity used for the production of hydrogen (which is regarded as an energy product in the Commission's proposal)

should not be taxed. This should, of course, also apply to all other energy products. The Swedish Gas Association therefore believe that the text should be supplemented so that it reads instead "*Member States may also consider the consumption of electricity and other energy products not produced within the curtilage of such an establishment and the consumption of energy products and electricity within the curtilage of an establishment producing fuels to be used for generation of electricity* ***or any other energy product*** *as not giving rise to a chargeable event.*"

Yours faithfully,

Maria Malmkvist
CEO

Anna Wallentin
Head of Department