9 May 2023

Dear Member States' representatives,

Our organizations are following with great concern the ongoing revision of the EU Energy Taxation Directive (ETD). Having in mind the latest Council Presidency compromise text of 3 May 2023, the **EU Biofuels Value Chain* and the European Biogas Association** would like to reaffirm our position of 28 November 2022, and share additional concerns on the ETD revision on behalf of our sectors.

The proposal to set the same minimum tax rate for fossil fuels as well as sustainable crop-based biofuels is unacceptable. To stay on track towards the 55% emissions reduction target by 2030 and climate neutrality by 2050, all renewable pathways should benefit from tax incentives to boost the transition to fossil free sustainable alternative fuels in transport.

The signatories of this letter are deeply concerned with the **unfair discrimination among different renewable fuels**, within both the European Commission proposal and the latest draft compromise text prepared by the Council Presidency. This discrimination would lead to an unpredictable and arbitrary energy taxation framework, in breach of the EU Climate Law and basic principles of EU Law, as well as undermining international competition.

Considering the above, we propose the following elements for a successful ETD revision:

1. **Energy taxation should adequately reflect renewable fuels' sustainability and GHG savings compared to fossil fuel:**

   To this end, sustainable crop-based biofuels and biogas should be included in the category of 'sustainable biofuels and biogas', if they meet the sustainability criteria laid under the EU Renewable Energy Directive (RED II). This would grant them a fixed favourable taxation level compared to fossil fuels, and rightly reflect their superior environmental performance and GHG savings.

   Sustainable crop-based biofuels, such as renewable ethanol, biodiesel and biogas, are the biggest contributors to today's decarbonisation of the European transport sector, and can immediately and cost-effectively reduce the EU's reliance on fossil fuels. They deliver significant GHG emissions savings compared to fossil diesel or petrol, which will unfortunately remain the main fuels for the existing fleet of hybrid cars, vans, trucks, and buses, that will continue to predominate on Europe's roads until at least 2030 and possibly beyond ([1]).

   The proposal to exclude sustainable crop-based biofuels and biogas from the category of 'sustainable biofuels and biogas', and to increase their minimum taxation rate to the same level as fossil fuels in 2033, is not acceptable.

   This discrimination ignores that:

   - **The current and future EU legislation on renewables (RED II and RED III)** already sets clear and stringent sustainability criteria, including minimum GHG savings criteria, for all biofuels to count towards the renewable energy targets, limiting the phase-out only to high ILUC-risk biofuels and biogas. This approach was kept in the Commission's proposal for the revision of the RED II (and retained in the recent agreement between the co-legislators), which largely maintains the existing policy framework on crop-based biofuels and biogas.

[1] 2022 Report on the achievement of the 2020 renewable energy targets, DG ENER, 15 November 2022

- **Additional concerns that might exist regarding European crop-based biofuels and biogas are addressed in the existing Renewable Energy Directive,** namely in the Delegated Act on High ILUC-Risk Biofuels, expected to be reviewed in 2023.

- **In addition to their immediate ability to reduce GHG emissions, sustainable crop-based biofuels contribute to increase the European energy independency, which has become critical since the energy crisis.** The report of the International Energy Agency stressed that following Russia's invasion of Ukraine, demand for renewables has grown significantly to the point where renewables will become the largest source of power generation by early 2025. Among other actions, the report stresses the need to "*focus on raising biofuel use"* ([2]).

By proposing taxing sustainable crop-based biofuels as fossil fuels, in comparison with other sustainable biofuels, the draft revised ETD as it stands:

- violates the European Climate Law, frustrates the objectives of the 'Fit-for-55' package and constitutes a failure to state reasons, in violation of Article 296 TFEU;
- is also inconsistent with several principles of EU law: the proportionality principle, the principle of equal treatment, and the principle of legal certainty.

2. **Energy taxation should remain pragmatic and incentivise investments, predictability and fair competition considering international dimension:**

- While US biofuel producers are set to receive a remarkable amount of state subsidies and tax credits for domestic production of clean fuels thanks to the Inflation Reduction Act of 2022, EU renewable fuels – which outperform its competitors in terms of GHG emissions savings, are penalised and EU investments are put into jeopardy.

- At the same time, the ETD proposal could be seen as an unnecessary obstacle to international trade under the Technical Barrier to Trade Agreement, or as a discrimination over imported products under GATT, in particular if sustainable crop-based biofuels and biogas remain treated as the worst fossil pathway.

Therefore, the revised ETD should provide the same level of incentives for the continued use of sustainable, already available, and affordable alternatives to fossil fuels, including sustainable crop-based biofuels and biogas.

We hope the arguments above stated are taken under consideration in the upcoming discussions on the ETD in the Economic and Financial Affairs Council of 16 June 2023. We are fully available to provide further arguments if you deem it necessary.

Sincerely,

The Members of the EU Biofuels Value Chain* and the European Biogas Association

** The EU Biofuels Value Chain represent all actors from farming to biofuels production:*

- ***CEFS*** *– represents EU beet sugar manufacturers;*
- ***CEPM*** *– represents the maize chain: corn, maize silage, maize seed, and sweet corn;*
- ***C.I.B.E.*** *– represents the European sugar beet growers;*
- ***Copa and Cogeca*** *– represent European farmers and agri-cooperatives;*
- ***European Biodiesel Board (EBB)*** *– represents the European biodiesel industry;*
- ***European Oilseed Alliance (EOA)*** *– represents European oilseed producing organisations;*
- ***European renewable ethanol association (ePURE)*** *represents the European renewable ethanol producers;*
- ***FEDIOL –*** *represents the interests of the European vegetable oil and protein meal industry.*

[2] International Energy Agency, Renewables 2020 – Analysis and forecast to 2027, December 2022.