

The Role of Energy Taxation in Terms of Achieving Climate Neutrality

Dóra Lovas

Dr., Research Associate, Faculty of Law, University of Debrecen, correspondence address: Kassai út 26, 4028 Debrecen, Hungary; e-mail: lovas.dora@law.unideb.hu

 <https://orcid.org/0000-0002-0002-0832>

Keywords:

energy tax,
European Union,
Climate Neutrality,
sovereignty
of the Member States

Abstract: The energy tax is a type of environmental tax. In addition to its ability to generate revenue for the central budget, it is important that it can have a major impact on the achievement of the European Union's significant but not legally binding objectives in the field of energy policy and climate change. The role of the energy tax is gradually increasing, partly due to the growing importance of environmental considerations in certain policies, on the other hand, the EU attaches great importance to the harmonization of these tax rules, as almost 75% of environmental taxes in integration come from the energy sector, so the role of energy taxes in environmental taxation and policy is also important. The EU wants to reduce its greenhouse gas emissions by 55% by 2030 and achieve full climate neutrality by 2050, as set out in the Green Agreement Communication. Aiming to achieve these goals, the European Commission has adopted the so called 'Fit for 55' package of proposals on climate protection, which, in addition to several measures, states the need of the amendment of the Energy Tax Directive (hereinafter: Energy Tax Directive, the Directive). The reason for this is that, in its current form, it is not in line with climate protection goals, as it does not encourage the reduction of greenhouse gas emissions and energy efficiency.

The paper was prepared in the framework of Project no. 134499 titled 'Increasing government intervention in market regulation' has been implemented with the support from the National Research, Development and Innovation Fund, financed under the K_20 „OTKA” funding scheme.

1. Introduction

The energy tax is one of the environmental taxes, in addition to taxes on transport, pollution, and resources.¹ Member States' regulations on energy taxation, which are largely different, have developed through long and cumbersome processes. An energy tax is a financial instrument to influence the production and supply of energy. Taxes on energy products optimally reduce the demand for these products, thereby reducing the emissions associated with their consumption. The energy tax provides an opportunity to reconcile the incentive role of taxes with their revenue-generating potential, but a flexible and comprehensive approach to energy taxation is not enough, but its uniform regulation is also important.²

The establishment and development of EU energy tax regulation are significantly influenced by the economic, historical, and cultural implications in the Member States.

In the beginning (and still to this day, but not to the extreme extent) as the many Member States had as many regulations and numerous reports on the concept of energy tax.

The Energy Tax Directive has clarified the meaning of this definition by designating as a common denominator the tax, which is still coal, natural gas, and electricity. According to many, this legislation was not a step forward as it only recorded an existing situation. It should also be noted that the scope of the Directive to date does not cover the taxation of heat production or the special use of energy products and electricity.

Regulatory standardization has been preceded by serious professional and scientific debates in Europe, the main reason for which many factors have influenced and continue to influence its design and development, including the regulation of the EU internal market, the liberalization, and deregulation of the energy sector, the importance of energy security, environmental policy, and other political processes.³

¹ István Simon, *Pénzügyi Jog II* (Budapest: Osiris Kiadó, 2012), 236 – 238.

² Zoltán Nagy, "Az adópolitika szabályozási eszközei szolgáltatási szempontból," in *Közszolgáltatások megszervezése és politikái*, ed. Tamás Horváth M. and Ildikó Bartha (Budapest-Pécs: Dialóg Campus, 2016), 220 – 221.

³ Nagy, "Az adópolitika szabályozási eszközei szolgáltatási szempontból," 225 – 228.

The taxation of the energy sector in the Member States of the European Union began to show a common picture with the adoption of Council Directive 2003/96/EC, but problems and difficulties persisted after the adoption of this legislation.⁴ One such difficulty is that taxation is a fundamental sovereign right of the EU Member States, making it difficult to reach a joint decision on it. In connection with this, the problem of the harmonization of excise duty related to energy products in the European Union can be mentioned, as it started in the 1970s, but only in 1992 (Directive amended in 2008), it takes legal form.⁵ Harmonization covers the range of products, exemptions, minimum tax rates, and the movement of products between the Member States. To date, efforts have been made to increase harmonization in this area for the single market to function properly, as the minimum level of excise duties has not achieved the desired approximation effect, and there are still large differences between the Member States.⁶ The Energy Tax Directive is a vertical directive of EU excise duty, but it is also a specific environmental tax that affects not only production but also services.

The importance of the institution of energy taxation, in addition to its revenue-generating capacity and its influence on market processes, is given by the fact that the achievement of the European Union's important but not legally binding objectives in the field of energy policy and climate change may be greatly influenced by its regulation. I would like to examine the significance of the latter further.⁷

2. The connection between energy taxation and climate protection

Climate protection considerations are key in the regulation of energy taxation in the European Union, as this type of tax can make a significant contribution to achieving environmental goals. The United Nations has held annual conferences in the fight against global warming since 1992, which

⁴ Nagy, "Az adópolitika szabályozási eszközei szolgáltatási szempontból," 234.

⁵ Council Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC (O.J.E.C. L9, 14 January, 2009).

⁶ Annamária Kazainé Ónodi, *A nemzetközi adózás vállalatgazdasági problémakörei* (Budapest: Budapesti Corvinus Egyetem Vállalatgazdaságtan Intézet, 2008), 13–15.

⁷ Valeria Andreoni, "Environmental taxes: Drivers behind the revenue collected," *Journal of Cleaner Production*, no. 221(2019): 17–26, <https://doi.org/10.1016/j.jclepro.2019.02.216>.

have resulted in several forward-looking agreements (such as the Paris Agreement).⁸

After the 2000s, the European Union began to work on these international instruments, setting out a joint commitment with the Member States. Integration envisages meeting the targets set in international instruments on climate protection by working with the Member States. In addition to international conferences and documents, its Green Papers have already addressed the growing urgency of the Community's energy dependency and the shortcomings of its energy and environmental policies. For example, the 2006 Green Paper feared that by 2030, the Union's energy addiction would increase to at least 60% if processes that did not protect the environment were to continue. To avoid this, it has already sought to identify solutions, such as sustainable development or the diversification of the energy mix and has emphasized the promotion of renewable energy sources and energy efficiency.⁹

The European Union has already recognized that economic growth is placing an increasing environmental burden on the Earth, which is why environmental policy regulation is becoming increasingly important. The state, as well as the European Union, must regulate market conditions aiming to protect the environment, and indirect regulatory instruments are becoming increasingly important within this environmental policy framework. I classify environmental taxes, such as energy taxes, as indirect regulatory instruments (as opposed to, for example, legislation that is a direct instrument).¹⁰ The European Union currently has 27 Member States, where the role of energy taxation is gradually increasing, partly due to the growing importance of environmental considerations in certain policies, and partly because the Union pays close attention to the harmonization of these

⁸ Tibor, Faragó, "Új nemzetközi éghajlatvédelmi megállapodás," *Magyar Energetika*, XXII, 5–6 (2015): 58–61, DOI:10.21867/KJK/2017.1.6.

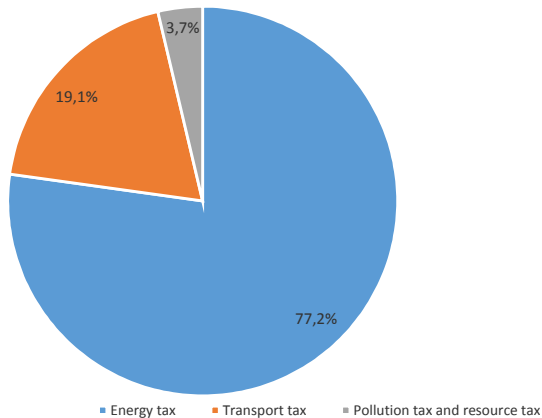
⁹ Commission of the European Communities, Green Paper, A European Strategy for Sustainable, Competitive and Secure Energy, COM/2006/105.

¹⁰ Ildikó Bartha and Zoltán Nagy, "Energiaadó vagy valami más? A környezetvédelmi közterhek hatásmechanizmusáról," *Közjavak folyóirat*, 2017/3 (2017): 7–10.

tax rules as 75% come from the energy sector,¹¹ so energy taxes also play a significant role in environmental taxation and policy.¹²

There are the following types of environmental taxes in the European Union system: energy taxes (including carbon tax), transport taxes, pollution taxes and resource taxes.¹³

Distribution of environmental taxes (2020)



Resources: Eurostat.¹⁴

¹¹ "Annual greenhouse gas emissions in the European Union (EU-27) from 1990 to 2020, by sector," Statista, accessed May 1, 2022, <https://www.statista.com/statistics/1171183/ghg-emissions-sector-european-union-eu/>.

¹² Károly Kiss, "Környezetvédelmi adóreform Nyugat-Európában – és néhány hazai vonatkozás," in *BKÁE Környezettudományi Intézetének sorozata 11*, ed. Sándor Kereskes and Károly Kiss (Budapest: Aula Kiadó, 2002), 33–60.

¹³ Orsolya Rónay, "Az Európai Unió energiaadó rendszere," *Journal of Agricultural and Environmental Law*, special student's edition (June 2012): 37–52.

¹⁴ "Total environmental tax revenue by type of tax and tax payer, EU, 2019 and 2020," Eurostat, accessed June 1, 2022, https://ec.europa.eu/eurostat/statistics-explained/index.php?title=File:Total_environmental_tax_revenue_by_type_of_tax_and_tax_payer_EU_2019_and_2020.png.

Revenue from environmental taxes is illustrated in the table below between 2016 and 2020 (million euro).

Type	2016	2017	2018	2019	2020
Energy tax	3135	3258	3176	3015	2781
Transport tax	1924	1929	1917	1987	1729
Pollution and Resource tax	58	46	26	18	11
Total	5117	5232	5119	5020	4520

Sources: CSO Ireland

The table shows that the income from environmental taxes decreased between 2016 and 2020. This supports the need to amend the current European Union regulations.

3. On the road to unified energy taxation

The European Union has taken the view that energy policy, and in particular tax policy, had to consider four aspects of its regulatory environment to facilitate the renewal of energy supply in the European Union and the country. Service quality and safety, sustainability, environmental protection, competitiveness, and energy efficiency must be taken into account.

In terms of the characteristics of an energy tax, a single-phase, indirect tax, so the person liable for payment, is not the actual taxable person. In connection with this instrument, the taxable person is the first identifiable user or consumer of the product (purchase from a distributor, energy import, production for own use).¹⁵ As the development of EU tax provisions was aimed at the smooth functioning of the single market, the harmonization of indirect taxation was earlier and more thorough than that of direct taxation. This is since indirect taxes play a greater role than direct taxes in the proper functioning of the internal market, with the result that the highest degree of approximation achieved by directives has taken place in the field of value-added tax and excise duties mentioned above.¹⁶ One

¹⁵ Gábor Földes, *Adó jog* (Budapest: Osiris Kiadó, 2004), 286.

¹⁶ Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (O.J.E.C. L 347, 11 December 2006).

of the most controversial points in the drafting of the uniform energy tax regulation was that the energy tax regulations of the individual Member States, and thus the energy prices, differed from each other, significantly differentiating the conditions of competition.¹⁷

As early as the early 1990s, the Commission took several initiatives to introduce a common carbon or carbon tax, which is a tax on energy in addition to electricity and natural gas. One of the most important milestones is the Commission's 1992 proposal on Ğ taxation, which the Member States considered being suitable for combating climate change, yet they failed to find a common denominator and no EU legislation was adopted. In 1997, another unsuccessful proposal was made to establish a three-step framework for the taxation of Community energy products for harmonization purposes. However, the objectives of this initiative also included environmental protection, encouraging modal shift, energy tax-funded job creation, and fiscal harmonization.¹⁸ On 20 March 2003, the Member States finally agreed on the rules for the proposed energy tax, an EU act that contains only framework rules to date. It must extend the scope of taxable products from the mineral oil regulated so far to natural gas, coal, and electricity, so the scope of the Directive has become wider than that of previous rules.¹⁹

The EU internal market has been an influential aspect of the Directive, as appreciable differences in the national energy tax rates applied by the Member States may prove detrimental to its proper functioning. Furthermore, the liberalization and deregulation of the energy sector, energy security, environmental policy, and other political processes have also played a role. The Directive aims to enable the European Union's single energy market to function smoothly and to avoid distortions of trade and competition resulting from major differences between national tax systems. Furthermore, the taxation of energy products and, where appropriate,

¹⁷ Károly Kiss, "Energiaadók az Európai Unióban (környezetgazdasági elemzés)," *Budapesti Közgazdaságtudományi és Államigazgatási Egyetem Környezettudományi Intézetének tanulmányai*, no. 13(2002): 12.

¹⁸ Zoltán Szabó, *Az államháztartás ökoszociális reformjának szükségése és lehetősége* (Budapest: Levegő Munkacsoport, 2007), 258 – 265.

¹⁹ Council Directive 92/81/EEC of 19 October 1992 on the harmonization of the structures of excise duties on mineral oils (O.J.E.C. L 316, 31 october, 1992).

electricity is one of the means of achieving the objectives of the Kyoto Protocol, which the Union undertook in the 2000s.²⁰

However, it should be noted that the Energy Tax Directive did not bring about any significant changes in the functioning of the internal market, but rather fixed the status quo by including the minimum tax in a binding act.²¹ Although the main objectives of the Directive includes the proper functioning of the internal market, the harmonization of Member States' energy tax rules, the setting of certain energy management targets, and the protection of the environment, no major progress has been made.²²

Another problem is that the Directive sets mandatory minimum levels of taxation at a very low level and exempts energy-intensive users extensively from taxation. Unfortunately, the Commission's proposal for carbon taxation was not accepted either. The Energy Tax Directive only partially serves environmental policy purposes, although tax policy and climate protection objectives must be consistent. Perhaps the Commission's communication on the 2019 Green Agreement will succeed, at least in part.

4. Case-law of the Court of Justice of the European Union on energy taxation

The case-law of the Court of Justice of the European Union on energy taxation, which is of great importance in the field of Community tax law, should also be highlighted. Most of the legal cases related to energy tax raise problems related to the issue of tax benefits and exemptions.²³ The specific provision for the energy tax is not included in the primary sources of law but is regulated by EU directives.

Dániel Deák, analyzing several eco-tax judgments of the Court of Justice of the European Union (for example the *Frohnleiten*, *Kernkraftwerke*

²⁰ Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity (O.J.E.C. L 283, 31 november, 2003). Preamble (2)-(7).

²¹ Council Directive 2003/96/EC.

²² Sirina Withana, Patrik ten Brink, Andrea Illes, Silvia Nanni and Emma Watkins, *Environmental tax Reform in Europe: Opportunities for the future* (London: Institute for European Environmental Policies-Final Report, 2014), 3–33.

²³ Gabriella Erdős, Gábor Földes, Tamás Öry and Mária Véghelyi, *Az Európai Közösség Adójo-ga* (Budapest: KJK-Kerszöv, 2000), 34–36.

Lippe-Ems or the British Aggregates Association decisions), stated that the interests of the internal market and freedom of competition always prevail when conflicting with the principles and values of environmental policy. In his opinion, the weaknesses of the European Union's regulations are reflected in the resolution of such conflicts.²⁴ From my point of view (seeing the latest cases of the CJEU in 2020 or 2021), environmental requirements are starting to come to the fore, which is supported by the progress of the efforts to revise the Energy Tax Directive in this aspect.²⁵

Directive 2003/96/EC lays down framework rules, so it is up to the Member States to lay down detailed rules. This is the reason why in many cases the transposition of a provision of a directive by a Member State before the Court of Justice has required interpretation. As the cases I have analyzed show, most of the issues arise concerning tax exemptions and reductions and the avoidance of double taxation. In the following, I would like to highlight just a few examples of the small number of CJEU judgments.

In the Fendt case, the scope of the exemption provision of Directive 2003/76/EC has been disputed. In its decision, the EU institution stated that a Member State could not be restricted from imposing a consumption tax on lubricating oils which were not intended for use as heating fuel or fuel, since the relevant directive did not provide a precise list of those energy products.²⁶ The Directive does not prohibit national legislation which imposes a tax on lubricating oils if they are not intended for use as fuel or are not offered for sale or use in that way.²⁷

In Flughafen Köln, the question was whether a taxable person could rely on the exemption provided for in the Harmonized Energy Tax Directive if a Member State failed to transpose the Directive by the deadline

²⁴ Hua Qin I, Martha Bass, Jessica D. Ulrich-Schad, David Matarrita-Cascante, Christine Sanders and Barituka Bekee, „Community, Natural Resources, and Sustainability: Overview of an Interdisciplinary and International Literature,” *Sustainability*, no. 12. (2020): 1–14. <https://doi.org/10.3390/su12031061>.

²⁵ CJEU Judgment of 7 March 2018, Cristal Union kontra Ministre de l'Économie et des Finances, Case C31/17, ECLI:EU:C:2018:168. 34.; CJEU Judgment of C465/15 sz. Hüttenwerke Krupp Mannesmann üg ECLI:EU:C:2017:640. 26.

²⁶ CJEU Judgment of 5 July 2007, Fendt Italiana Srl kontra Agenzia Dogane – Ufficio Dogane di Trento, Case C-145/06 et C-146/06, ECLI:C:2007:411., 34–44.

²⁷ Dániel Deák, „Környezeti adóharmonizáció és versenykonform szabályozás az Európai Unió Bírósága gyakorlatának fényében,” *Pro Futuro* no 1 (2017): 105.

and thus subsequently introduced a tax on the use of diesel for electricity generation. According to the Court, the wording of the obligation to exempt energy products (which are used to generate electricity) is sufficiently precise and unconditional, so that individuals have the right to invoke an exceptional rule of a directive before a national court against incompatible national legislation.²⁸ In the IRCCS case, the question was whether the charges to cover the overhead of the electricity system constituted taxes and, if so, whether the reimbursement of costs to energy-intensive companies in the processing sector was compatible with Community law. In the Court's view, the Directive allows Member States to make a distinction so that the tax advantage granted to such undertakings is permissible under the 2003 Act (it did not address the issue of prohibited State aid).²⁹

In the *Kernkraftwerke Lippe-Ems* case, the Court answered several questions. On the one hand, the Court has held that the exemption provided for in Article 14 of the Energy Tax Directive cannot be applied by analogy to the fissile material tax. On the other hand, according to the court, there is no direct and inseparable link between the use of fissile material and the consumption of electricity produced in the reactor of a nuclear power plant, so the tax in question cannot be harmonized because it is neither an excise duty nor any other indirect tax.³⁰

As only the production of electricity using fissile material is covered by the law of a Member State, it does not fall within the scope of the Directive.³¹ Furthermore, in the absence of selectivity, the disputed Member State tax does not constitute prohibited State aid within the meaning of Article 107 (1) TFEU, because the tax law of the Member States also makes no distinction between the tax rate and the taxable person, nor is it contrary

²⁸ CJEU Judgment of 17 July 2008, *Flughafen Köln/Bonn GmbH kontra Hauptzollamt Köln*, Case C-226/07, ECLI:EU:C:2008:429., 32–33.

²⁹ CJEU Judgment of 24 April 2015, *Istituto di Ricovero e Cura a Carattere Scientifico (IRCCS) – Fondazione Santa Lucia kontra Cassa conguaglio per il settore elettrico and Others*, Case C-189/15, ECLI: C:2015:17.

³⁰ CJEU Judgment of 04 Juni 2015, *Kernkraftwerke Lippe-Ems GmbH kontra Hauptzollamt Osnabrück üg*, Case C-5/14., ECLI:EU:C:2015:354.

³¹ "A hasadóanyagadó összeegyeztethető az uniós joggal - Az Európai Unió Bírósága ítéletet hozott," Az Európai Unió Bírósága, accessed May 8, 2022, <http://www.jogiforum.hu/hirek/34205>.

to the fact that it does not constitute a charge having equivalent effect to a customs duty.

Article 14 (1) of the Directive defines the permissible exemptions exhaustively.³² The provision cannot be interpreted broadly. There are two exceptions, the environmental derogation and the third subparagraph of Article 21 (5) of the Act, a kind of loophole (if small electricity producers are exempted, the energy products used to produce that electricity must be taxed).³³ The 2003 Directive aims to avoid double taxation, but the Member States may also tax energy products used to generate electricity for environmental reasons. A judgment handed down in 2018 also draws attention to this.³⁴

France has postponed the transposition of the Energy Tax Directive until 1 January 2009 but has continued to apply some of its provisions during the transitional period, allowing small electricity producers to be exempted from tax while requiring them to pay tax on energy products used to generate electricity. An earlier judgment had already provided that, during the transitional period, France was bound only by the obligation to maintain minimum rates.³⁵ This period should be interpreted restrictively so that there was only the possibility to restructure the entire system of taxation of electricity, so there is no possibility to change the taxation of energy products used to produce electricity. According to Article 1 of the Directive, Member States are required to tax the electricity produced and to exempt energy products used for its production, as a consequence of which double taxation can be avoided.³⁶

³² CJEU Judgment of 5 July 2007, *Fendt Italiana Srl kontra Agenzia Dogane – Ufficio Dogane di Trento*, Case C-145/06, et C-146/06, ECLI:C:2007:411, 36.

³³ CJE CJEU Judgment of 04 Juni 2015, *Kernkraftwerke Lippe-Ems GmbH kontra Hauptzollamt Osnabrück ügy*, Case C-5/14., ECLI:EU:C:2015:354.51.

³⁴ CJEU Judgment of 25 July 2018, *Messer France SAS kontra Premier ministre és társai*, Case C103/17, ECLI:EU:C:2018:587.

³⁵ CJEU Judgment of 25 July 2018, *Messer France SAS kontra Premier ministre és társai*, Case C103/17, ECLI:EU:C:2018:587. 23.

³⁶ CJEU Judgment of 7 March 2018, *Cristal Union kontra Ministre de l'Économie et des Finances*, Case C31/17, ECLI:EU:C:2018:168. 30.; CJEU Judgement of 27 Juni 2018, *Turbogás Produtora Energética SA kontra Autoridade Tributária e Aduaneira*, Case C90/17, ECLI:EU:C:2018:498.; CJEU Judgement of 27 Juni 2018, *Turbogás Produtora Energética SA kontra Autoridade Tributária e Aduaneira*, Case C90/17, ECLI:EU:C:2018:498. 35.

The legislation allows the Member States to exempt electricity produced by small producers and used by them on their own, provided that (for environmental purposes) the energy products used to produce the energy are taxed.³⁷ In addition, energy products used to generate electricity are exempt from taxation.³⁸ The Court ruled that the French State could not grant an exemption to producers because it had not set up a tax system following the Electricity Directive by 1 January 2009. It could not apply the exemption rules for small electricity producers under the Directive, while, by way of derogation from the same Directive, levied a tax on energy products used to produce that electricity.³⁹

Recent CJEU judgments have already reflected greater consideration of environmental objectives.⁴⁰ The legal act from 2003 aims to complete the internal market and avoid distortions of competition by setting minimum levels of taxation.⁴¹

Under the Directive, Member States may impose a reduced rate of excise duty on gas oil used for regular passenger transport, even if it does not cover non-scheduled passenger transport. It is also in favor of permissibility that more people choose scheduled flights, reducing diesel consumption (less self-sufficient), as a consequence of which environmental goals can be achieved.⁴²

5. Attempts to reform regulation

In addition to the goal of tax harmonization, the objectives of Directive 2003/76/EC include environmental policy. The European Union promotes energy efficiency in line with its objectives (under Article 6 of the Treaty

³⁷ CJEU Judgement of 27 Juni 2018, *Turbogás Productora Energética SA kontra Autoridade Tributária e Aduaneira*, Case C90/17, ECLI:EU:C:2018:498. 36.

³⁸ CJEU Judgment of 7 March 2018, *Cristal Union kontra Ministre de l'Économie et des Finances*, Case C31/17, ECLI:EU:C:2018:168. 28.

³⁹ CJEU Judgment of 16 October 2016, *UPM France*, C270/18. ECLI:EU:C:2019:862, 50–54.

⁴⁰ CJEU Judgment of 3 December 2020, Case C44/19. ECLI:EU:C:2020:982.; CJEU Judgment of Case C513/18. ECLI:EU:C:2020:59.

⁴¹ CJEU Judgment of 7 March 2018, *Cristal Union kontra Ministre de l'Économie et des Finances*, Case C31/17, ECLI:EU:C:2018:168.29.

⁴² CJEU Judgment of 12 September 2019, *Autoservizi Giordano società cooperativa kontra Agenzia delle Dogane e dei Monopoli - Ufficio di Palermo*, Case C513/18, ECLI:EU:C:2020:59. 30–35.

on the European Union, environmental protection requirements must be integrated into the definition and implementation of other Community policies) and under the Paris Agreement. The main goal is to reduce dependence on imported energy products and reduce greenhouse gas emissions. In an effort to protect the environment, Member States have the right to grant tax advantages to companies that take concrete steps to reduce their emissions.⁴³

However, there is a need to see some contradiction between the EU's environmental policy and its objectives of reducing energy dependency. After all, it is clear that the promotion of renewable energy sources and the frequent exclusion of them from market rules, on the one hand, and targeted solutions in the field of energy efficiency, on the other, will not be able to compensate for the growing energy demand in the current structure. This is evidenced by the growing dependence on energy from third States. Today, fossil fuel prices are much lower than renewables, but their long-term costs could far exceed those of more environmentally friendly varieties, as addiction from politically sensitive suppliers, could put the European Union in an unpredictable position. We can also experience this during the Russian-Ukrainian conflict. Thus, an increased tax on fossil fuels could steer the Member States and thus the EU even more towards increasing renewable energy sources and thus energy security.

Before the adoption of the Energy Tax Directive, differences in the levels of energy taxation applied by the Member States to energy products in the European Union harmed the functioning of the Union's internal market. As a result, the 2003 Directive sets separate minimum levels of taxation applicable to products used for heating, electricity generation, and fuel, based primarily on the amount of energy used. However, in addition to these minimum tax rates, Member States are free to set and adapt to their national circumstances and national tax rates they deem appropriate above the EU rate (principle of flexibility).⁴⁴ The problem is that the Directive sets mandatory minimum levels of taxation at a very low level and exempts energy-intensive users extensively from taxation. Unfortunately, instead of

⁴³ Council Directive 2003/96/EC preamble.

⁴⁴ Zoltán Nagy, *A környezeti adózás szabályozása a környezetpolitika rendszerében* (Miskolc: Miskolci Egyetem ÁJK, 2012), 128 – 173.

taxation based on carbon content, the obligation to pay is determined on the basis of volume, although a method adapted to the previous one would achieve greater protection of the environment.

Due to the increase in oil prices since 2005, the Commission already writes in its 2007 Green Paper that changes to the energy tax regime are needed, so more attention should be paid to environmental protection.⁴⁵ A year later, an EU directive called on the Member States to set national energy efficiency targets.⁴⁶

As a result of climate protection research and the failure of climate peaks, the Commission issued a follow-up to its Green Paper in 2009 to help the EU adapt to climate change, raising the issue of reducing the negative effects of climate change in the European Union. This was followed by the Europe 2020 Strategy (published in 2010), which required the Member States to increase the share of energy efficiency and renewable energy sources in general to 20% and to reduce greenhouse gas emissions by the same amount.⁴⁷

At the UN Climate Change Conference in Cancun in 2010, it was also stated that an energy tax could also contribute to sustainable development and encourage a more efficient, greener, and competitive resource economy.⁴⁸ As a result, the Commission presented a proposal for a revision of the Energy Tax Directive in 2011, which was also part of the Europe 2020 Strategy. The Commission's proposal paves the way for better quality budget revenues, in line with the Europe 2020 strategy and the need for proper economic recovery and job creation.⁴⁹ The proposal points out that the strategy is incomplete, as the European Union has set significant but non-binding targets for energy policy by 2020. According to the institution,

⁴⁵ "A környezetszennyezés ára – Ismét napirendre kerülhet a bizottságban az energiaadó „zöldítése”", Jogi Fórum, accessed June 9, 2022, <http://www.jogiforum.hu/hirek/22145>.

⁴⁶ Directive of the Council of 5 April 2006 on energy end-use efficiency and energy services and repealing Council Directive 93/76/EEC (O.J.E.C. L 114, 27 April, 2006).

⁴⁷ Tekla Sebestyén Szép, „Energetikai konvergencia az Energia 2020 Stratégia tükrében,” *Közgazdasági Szemle*, no. LXIII (2006): 564–568.

⁴⁸ "The European Parliament & Cancun," European Parliament, accessed May 13, 2022, <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+IM-PRESS+20101203-FCS06288+0+DOC+XML+V0//HU>.

⁴⁹ European Commission, EUROPE 2020. A strategy for smart, sustainable and inclusive growth, COM (2010) 2020.

energy taxation can play an important role in achieving the objectives of the 2020 Strategy, which requires that this type of tax be brought into line with the European Union's energy policy and climate change objectives.

The Commission proposes that the current Energy Tax Directive is inadequate, as it does not address the more ambitious goals set by the European Union in the field of energy and climate change policy. It also needs to be reviewed to address the problems that have arisen in the internal market and to resolve the anomalies that exist between the Directive and the European Union Emissions Trading Scheme (ETS). The elaborated proposal, therefore, reveals the problems that will already exist in energy taxation by 2011 and identifies the expected areas for regulatory change.⁵⁰

According to the Commission, energy taxation would be appropriate if it changed in terms of carbon content. After all, linking the level of the tax to the energy content would be a great incentive to increase energy efficiency in all sectors. The creation of an EU tax framework will avoid diversity of Member States' green tax policies, leading to greater legal certainty and lower compliance costs for businesses. The proposal makes a clear distinction between sectors participating in and outside the EU Emissions Trading Scheme, which helps to avoid double taxation.⁵¹

In addition, Member States may choose to reform their tax systems to promote growth, i.e. to reduce the tax burden on labor in line with the increase in taxes on energy products⁵² (in line with the Europe 2020 Strategy).⁵³ The legislation on energy taxation in the Member States is extremely diverse, one of the reasons being that the current Directive allows for several alternative exemptions and reductions, which, among other things, is a problem for companies present in more than one Member State at the same time. The initiative would also narrow the scope of these

⁵⁰ "A környezetszennyezés ára – Ismét napirendre kerülhet a bizottságban az energiaadó "zöldítése"", Jogi Fórum, accessed June 9, 2022, <http://www.jogiforum.hu/hirek/22145>.

⁵¹ Ralf Martin, Laure B. de Preux, Ulrich J. Wagner, "The impact of a carbon tax on manufacturing: Evidence from microdata," *Journal of Public Economics*, no. 117(2014): 1–14.

⁵² Chi Man Yip, "On the labor market consequences of environmental taxes," *Journal of Environmental Economics and Management*, no 89 (2018): 136–152.

⁵³ European Commission, Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee on Smarter energy taxation for the EU: proposal for a revision of the Energy Taxation Directive, COM(2011) 168.

exemptions. However, the European Parliament decided in the plenary in 2012 not to support the European Commission's proposal to revise the Energy Tax Directive.⁵⁴ Almost seven years later, the Commission has addressed the issue again and in 2019 published the European Commission's Communication on a Green Agreement. It already refers to an environmental review of the energy tax soon.

6. Towards more efficient, greener energy taxation

The European Union wants to reduce its greenhouse gas emissions by 55% by 2030 compared to 1990 and to achieve full climate neutrality by 2050, with the goal of the so-called Described in the European Climate Regulation, which is part of the Green Agreement. However, this requires forward-looking action by the Member States, so the European Commission has identified 17 sort of interventions⁵⁵ that it considers necessary to achieve the 2030 targets, as part of a package of climate protection proposals called 'Fit for 55', which included a proposal to amend the Energy Tax Directive.⁵⁶

The current Directive is not in line with climate protection objectives, as it does not provide sufficient incentives for reducing greenhouse gas emissions and energy efficiency. In order to properly influence economic processes, it would require a higher tax rate than the current minimum from 2023 (implementing the increase over a period of ten years). Most importantly in the proposal, it would no longer apply taxation based on quantity but on energy content, which would eliminate one of the biggest flaws of the current Energy Tax Directive. Another outstanding innovation would be the extension of the subject matter of the tax (for example biogas) while abolishing several discounts and exemptions. In parallel, the new legislation will allow support for the energy-poor social group through redistribution. In general, we can talk about energy poverty if an individual

⁵⁴ "Magas gázolajárakat hozhat az EP szerint az új energiaadó," Jogi Fórum, accessed May 22, 2022, <http://www.jogiforum.hu/hirek/27562>.

⁵⁵ "Commission launches the Fit for 55% Package," Interreg Europe, accessed May 05, 2022, <https://www.interregeurope.eu/news-and-events/news/commission-launches-the-fit-for-55-package>.

⁵⁶ European Commission, Proposal for a Council Directive restructuring the Union framework for the taxation of energy products and electricity (recast), COM(2021) 563.

is unable to heat their home to the right level, and proper heating is a disproportionate burden.⁵⁷

Interestingly, the third and then fourth energy packages also address this issue, as it is more of a social issue, as it depends on the definition of the (government-defined) threshold as to who and how many are among the energy-poor, so it depends on subjective political considerations.⁵⁸

To support vulnerable groups (and energy-efficient investments), the ‘Fit for 55’ package would create a €72.2 billion Climate Fund with a Member State’s contribution and share (gross national income index, CO₂ emissions, and population in need, would be different). Achieving climate neutrality would adversely affect the Central and Eastern European countries most dependent on fossil fuels, but redistribution through the Climate Fund will eliminate this imbalance. The Member States would have a margin of discretion concerning redistribution, so it is up to their subjective consideration to support the lower strata of society or to extend it to the middle and possibly upper classes. Furthermore, it is questionable what effect this charge on energy products will have on the market price of energy, as it is likely to increase. From Hungary’s point of view, this could lead to the unsustainability of the overhead reduction measure. However, in the long run, there are significant benefits to be gained from achieving climate neutrality and energy security.

7. Conclusion

According to my findings, which are supported by European Union documents and relevant UN studies (for example the Stern Review), economic incentives such as energy taxation are needed to achieve the European Union’s goals in the field of energy and climate change. An energy tax is a financial instrument that can effectively influence energy production and use and make energy users interested in achieving energy efficiency.

My conclusion is that energy policy is becoming increasingly important in the European Union. The current EU tax base for energy taxation is

⁵⁷ Orsolya Fülöp and Adrienn Lehoczki-Krsjak, “Energiaszegénység Magyarországon,” *Statistikai Szemle*, no. 8–9 (2014): 820–831.

⁵⁸ European Commission, Commission staff Working paper an energy policy for consumers SEC (2010) 1407.

provided by Council Directive 2003/96/EC, but literature research and other studies have revealed the problems that have arisen since the adoption of this legislation in the 2011 Commission proposal to revise the Directive and the 2019 Green Agreement is also shown. The Directive aims to enable the European Union's single energy market to function smoothly and to avoid distortions of trade and competition resulting from major differences between national tax systems. Furthermore, the taxation of energy products and, where appropriate, electricity may be one of the most important means of achieving the objectives of the Paris Agreement.

However, the Directive is currently unable to achieve these objectives effectively, and it is negative that it does not address the more ambitious goals set by the European Union in the field of energy and climate change policy. It is also problematic that it cannot adequately address the problems that have arisen in the internal market and that its scope is not in line with the scope of the EU Emissions Trading Scheme (ETS). Optimally, an energy tax not only serves to protect the environment but is also good for helping economic growth and addressing social tensions. The justification for environmental taxes, such as energy taxes, still rests on a market basis, while we are seeing increasingly unfavorable signs of climate change produced by a market economy. The European Union cannot achieve these goals alone, but it also needs the significant involvement of the Member States. The difficulties mentioned here are, for example, that the design of the tax structure and the choice of tax instruments fall within the sovereign competence of the Member States, and that only the Member States are able to reduce emissions. However, the European Union also has a long way to go in these areas, so regardless of these difficulties, it must adopt and implement strict targets. Overall, the European Union's goals in the field of energy and climate change can only be achieved through close cooperation between the Member States and the European Union, often by relinquishing part of the sovereignty of the Member States. In the 'Fit for 55' climate package, one of the main aims of which is to amend the Energy Tax Directive in the way needed to achieve climate neutrality. The two most important proposals in this regard are to increase the minimum tax rates, which have remained virtually unchanged since 2003, from 2023, and to extend the scope of the Energy Tax Directive. This would increase the price of fossil fuels, making renewables even more desirable. This is important

because these energy sources are important not only for achieving climate protection goals but also for reducing the EU's energy dependence. Reducing the scope of exemptions and reductions would also serve this purpose, as many fossil fuels used in transport currently benefit from discounts. Several countries do not agree with the reforms, so it is doubtful that this part of the 'Fit for 55' climate package will be adopted. A key social aspect of the proposal is that it would provide support to vulnerable people through the redistribution of a climate fund. However, energy poverty is more of a social issue, as it depends on the definition of the (government-defined) threshold as to who and how much is energy poor, so it depends on subjective policy considerations. Thus, it may depend on the subjective policy considerations of a given Member State whether it supports the most vulnerable or redistributes a higher income group with lower exposure.

References

- Andreoni, Valeria. "Environmental taxes: Drivers behind the revenue collected." *Journal of Cleaner Production*, no. 221(2019): 17–26.
- Bartha, Ildikó and Zoltán Nagy. "Energiaadó vagy valami más? A környezetvédelmi közterhek hatásmechanizmusáról." *Közjavak folyóirat*, 2017/3 (2017): 7–10.
- Deák, Dániel. "Környezeti adóharmonizáció és versenykonform szabályozás az Európai Unió Bírósága gyakorlatának fényében." *Pro Futuro* no 1 (2017): 105.
- Erdős, Gabriella, Gábor Földes, Tamás Öry and Mária Véghelyi. *Az Európai Közösség Adójoga*. Budapest: KJK-Kerszöv, 2000.
- Faragó, Tibor. "Új nemzetközi éghajlatvédelmi megállapodás." *Magyar Energetika*, XXII. 5–6 (2015): 58–61.
- Földes, Gábor. *Adójog*. Budapest: Osiris Kiadó, 2004.
- Fülöp, Orsolya and Adrienn Lehoczki-Krsjak. "Energiaszegénység Magyarországon." *Statistikai Szemle*, no. 8–9 (2014): 820–831.
- Kazainé Ónodi, Annamária. *A nemzetközi adózás vállalatgazdasági problémakörei*. Budapest: Budapesti Corvinus Egyetem Vállalatgazdaságtan Intézet, 2008.
- Kiss, Károly. "Energiaadók az Európai Unióban (környezetgazdasági elemzés)." *Budapesti Közgazdaságtudományi és Államigazgatási Egyetem Környezettudományi Intézetének tanulmányai*, no. 13(2002): 6–64.

- Kiss, Károly. "Környezetvédelmi adóreform Nyugat-Európában – és néhány hazai vonatkozás." In *BKÁE Környezettudományi Intézetének sorozata 11*, edited by Sándor Kereskes and Károly Kiss, 33–60. Budapest: Aula Kiadó, 2002.
- ManYip, Chi. "On the labor market consequences of environmental taxes." *Journal of Environmental Economics and Management*, no. 89 (2018): 136–152.
- Martin, Ralf, Laure B. de Preux, and Ulrich J. Wagner. "The impact of a carbon tax on manufacturing: Evidence from microdata." *Journal of Public Economics*, no. 117(2014): 1–14.
- Nagy, Zoltán. "Az adópolitika szabályozási eszközei szolgáltatási szempontból." In *Közszolgáltatások megszervezése és politikái*, edited by Tamás Horváth M. and Ildikó Bartha, 220–221. Budapest-Pécs: Dialóg Campus, 2016.
- Nagy, Zoltán. *A környezeti adózás szabályozása a környezetpolitika rendszerében*. Miskolc: Miskolci Egyetem ÁJK, 2012.
- Qin, Hua, Martha Bass, Jessica D. Ulrich-Schad, David Matarrita-Cascante, Christine Sanders, and Barituka Bekee. "Community, Natural Resources, and Sustainability: Overview of an Interdisciplinary and International Literature." *Sustainability*, no. 12(2020): 1–14.
- Rónay, Orsolya. "Az Európai Unió energiaadó rendszere." *Journal of Agricultural and Environmental Law*, special student's edition (June 2012): 37–52.
- Sebestyén Szép, Tekla. "Energetikai konvergencia az Energia 2020 Stratégia tükrében." *Közgazdasági Szemle*, no. LXIII (2006): 564–568.
- Simon, István. *Pénzügyi Jog II*. Budapest: Osiris Kiadó, 2012.
- Szabó, Zoltán. *Az államháztartás ökoszociális reformjának szüksége és lehetősége*. Budapest: Levegő Munkacsoport, 2007.
- Withana, Sirina, Patrick ten Brink, Andrea Illes, Silvia Nanni, and Emma Watkins. *Environmental tax Reform in Europe: Opportunities for the future*. London: Institute for European Environmental Policies-Final Report, 2014.
- "A hasadóanyagadó összeegyeztethető az uniós joggal - Az Európai Unió Bírósága ítéletet hozott," Az Európai Unió Bírósága, accessed May 8, 2022. <http://www.jogiforum.hu/hirek/34205>.
- "Annual greenhouse gas emissions in the European Union (EU-27) from 1990 to 2020, by sector," Statista. Accessed May 1, 2022. <https://www.statista.com/statistics/1171183/ghg-emissions-sector-european-union-eu/>.
- "The European Parliament & Cancun," European Parliament. Accessed May 13, 2022. <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+IM-PRESS+20101203FCS06288+0+DOC+XML+V0//HU>.
- "Total environmental tax revenue by type of tax and tax payer, EU, 2019 and 2020," Eurostat. Accessed June 1, 2022. <https://ec.europa.eu/eurostat/statis->

tics-explained/index.php?title=File:Total_environmental_tax_revenue_by_type_of_tax_and_tax_payer,_EU,_2019_and_2020.png.

”A környezetszennyezés ára – Ismét napirendre kerülhet a bizottságban az energiaadó „zöldítése”, Jogi Fórum. Accessed June 9, 2022. <http://www.jogiforum.hu/hirek/22145>.

”A környezetszennyezés ára – Ismét napirendre kerülhet a bizottságban az energiaadó „zöldítése”, Jogi Fórum. Accessed June 9, 2022. <http://www.jogiforum.hu/hirek/22145>.

”Commission launches the Fit for 55% Package,” Interreg Europe. Accessed May 05, 2022. <https://www.interregeurope.eu/news-and-events/news/commission-launches-the-fit-for-55-package>.

”Magas gázolajárakat hozhat az EP szerint az új energiaadó,” Jogi Fórum. Accessed May 22, 2022. <http://www.jogiforum.hu/hirek/27562>.

