

**Opinion of the European Economic and Social Committee on ‘Communication from the Commission to the European Parliament, the European Council and the Council — A more efficient and democratic decision making in EU energy and climate policy’**

*(COM(2019) 177 final)*

(2020/C 14/15)

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Referral	European Commission, 3.6.2019
Legal basis	Article 304 of the Treaty on the Functioning of the European Union
Section responsible	Transport, Energy, Infrastructure and the Information Society
Adopted in section	11.9.2019
Adopted at plenary	26.9.2019
Plenary session No	546
Outcome of vote (for/against/abstentions)	136/39/11

## 1. **Conclusions and recommendations**

### 1.1. *Conclusions*

1.1.1. The Communication is a complement to the fourth report on the State of the Energy Union. It focuses on the legislative framework for more democratic decision making in EU energy and climate policy as well as proposing that energy-related tax matters move from unanimity to qualified majority voting (with the accompanying ordinary legislative procedure).

1.1.2. The EESC welcomes the proposal to use the passerelle clauses to establish a qualified majority in the Council and a co-decision system with the European Parliament. In this new set-up, the EESC could play an important role in supporting the trilogue and should be involved.

While supporting the Communication, the EESC considers that efficient governance of the climate and energy strategy and greater coherence in EU legislation on energy taxation should take into account the concerns of European businesses, workers and other stakeholders, including consumers. The involvement and engagement of civil society, the support of Member States and the agreement and commitment of the social partners are important for the success of this process.

1.1.3. The EESC calls on the EU when using qualified majority voting, to remain committed to the subsidiarity principle and, in areas where it does not have exclusive competence, concentrate on areas in which shared objectives cannot be achieved more effectively at national, regional or local level.

1.1.4. The EESC is conscious of the potentially controversial nature of certain types of energy taxation under consideration. We therefore strongly recommend that the Commission clarifies that a similar approach to that expressed in COM(2019) 8 Communication ‘Towards a more efficient and democratic decision making in EU tax policy’ applies in this case as well such that the least controversial areas of taxation be identified for consideration in the first instance.

1.1.5. The EESC regrets that Communication COM(2019) 177 does not expand upon the potential types of specific tax decisions that might be discussed under qualified majority voting and urges the Commission to rectify this.

1.1.6. A sensitive approach is needed that fits local circumstances and steps will need to be taken to ensure a just transition so that workers, consumers and communities are not left behind. In such cases, new energy taxation measures may require compensatory funding from the EU to offset the social and economic damage caused.

## 1.2. *Recommendations*

1.2.1. The Communication on energy-related tax procedures should:

- be the subject of a profound analysis of the objectives, base and related structure of energy taxation and a thorough social and economic impact assessment on the consequences set out therein;
- be included in a wider and clear roadmap that goes hand in hand with developments in other areas of the Energy Union, involving targeted, consistent measures, including incentives and compensations, to support the transition towards more sustainable energy production and strategy.

1.2.2. The Commission has room for action using its present powers prior to any request that Member States relinquish sovereignty (via the specific or the general passerelle clauses), specifically:

- developing more specific instruments under Article 194(1) TFEU in order to increase EU cross-border inter-connector capacity, which is 'a matter of priority' for the European Union;
- re-engineering the present mechanism of incentives for generation/inter-connection capacity development; encouraging 'national diversities' and leveraging, rather than being subject to, them; anchoring the Energy Union to the EU industrial basis more effectively; reinforcing the use of free movement and state aid;
- making national energy taxation more transparent and neutralising the effects of national decisions under Article 194(2) TFEU which may affect the Union's overall interests, by taking simultaneously into account the fact that public intervention can also have positive effects;
- re-designing the EU's energy markets in order to better tackle economic, international trade and social issues raised by the transition for consumers, workers and businesses; cooperation with third countries must be based on a single energy trade policy to protect Member States from imbalances in the economic market, and to avoid an increase in EU energy dependence on third countries.

1.2.3. New impetus should be given to EU industrial policy by capitalising on clean energy investments made over the last few years. Championing EU companies in this regard would help boost further gross domestic product, create jobs and income, and therefore manage expected increases in energy costs more effectively.

1.2.4. The Commission should improve market design measures such as including further support for demand energy cooperatives or possible re-municipalisation of local distribution networks and review the way its work is organised, e.g., reconsidering the structure and number of EU agencies involved in energy policy building.

In this regard, the EESC could provide further input to determine whether European consumers and communities, businesses and workers already have the tools to take ownership of the energy transition in order to strengthen the Energy Union's goals. This could be done via an EESC own-initiative opinion on the new energy market design.

1.2.5. The cost of energy has a direct and immediate impact on all companies, workers, consumers and people's lives, and so the consequences of an unbalanced initiative on energy taxation have to be carefully considered. In this context the EESC welcomes the incoming Commission president's announcement of a new carbon border tax to ensure the competitiveness of European companies on the global market and avoid carbon leakage. Measures are needed to support the transition to more sustainable energy production and help many social groups to cope with the energy transition. In the event of job losses, new opportunities must be provided, and professional requalification and other negotiated solutions offered for involved workers.

## 2. Introduction

2.1. The Communication deals with energy taxation and Euratom Treaty reform, both issues closely linked to sovereignty. This is a controversial issue, and requests for transfers of sovereignty in such a sensitive field as taxation at this very time requires a wise approach. As stressed by the Commission in its document under the heading 'Energy tax reform should reflect social equity considerations' (point 2.3), any taxation on more 'polluting' energy could directly harm the weaker parts of society. This measure could thus be experienced by many European citizens as an additional burden, and the EESC is therefore pleased that the Commission recognises the sensitivity of the issue. The EESC refers to the many opinions it has published with recommendations to the Commission on how to address this problem.

The need for more efficient governance of the climate and energy strategy and greater coherence in EU legislation consequently brings with it the need for a much more intensive debate, at all levels of society, on the way in which decisions on energy taxation are taken, taking into account the concerns of EU businesses, workers and other stakeholders, including consumers. The right tool for this is an effective Energy Dialogue with organised civil society at EU, national, regional and local level.

2.2. Lastly, it must be borne in mind that while for the last 20 years EU energy policy has been closely linked to its environmental policy, by 2020 it will be entering another phase with broader targets, to be considered from the perspective of the Sustainable Development Goals. Energy is also at the core of industrial policy and EU investments applied over the last few years in the clean energy economy may now yield results by championing EU companies in several innovative sectors around the world.

## 3. The Commission Communication

3.1. The Commission prepared this Communication with a view to asking that energy-related tax matters be moved from unanimity to qualified majority voting (with the accompanying ordinary legislative procedure).

3.2. The Communication also aims to develop stronger democratic accountability under the Euratom Treaty, which does not place the European Parliament on the same footing as does the Lisbon Treaty.

3.3. The Communication outlines the current relevant framework: in addition to the usual qualified majority voting (TFEU Articles 194(1) and (2), first paragraph) and the explicit right of Member States to determine certain energy policies (TFEU Article 194(2), second paragraph), in the field of energy Council unanimity is required to adopt provisions that are primarily fiscal in nature (TFEU Article 194(3)), similar to what is required for tax-related environmental measures (TFEU Article 192(2)).

3.4. The Commission considers that the shift to qualified majority decision making is key in order to finalise the clean energy transition and the achievement of the 2030 energy and climate targets, as well as with a view to the relevant and growing influence that taxes and levies have on energy prices. In this regard, the Commission claims that the unanimity requirement has until now made it impossible to review the 2003 Energy Taxation Framework Directive <sup>(1)</sup>, which is largely based on outdated premises and is not driven by clean energy objectives:

- taxes based on the volume/weight of the energy products consumed rather than on their energy content,
- unchanged minimum rates giving inefficient signals and creating unfair competition.

Moreover, the Commission believes that sector-specific tax exemptions/reductions (in the aviation, maritime and road-haulage and agricultural/fisheries sectors and for energy-intensive industries) weaken incentives for greater energy efficiency.

3.5. In the Commission's view, the Communication is intended to pave the way for the review of the 2003 Directive, which is aimed at:

- *providing stronger support for the clean energy transition*, in the form of environmentally consistent tax rates and the replacement of fossil fuel subsidies with a carbon tax;
- *securing sustainable and socially fair growth*, via the transition to consumption and environmental taxes that are more growth-friendly, and harmonisation of taxation levels across Member States which will have a positive impact on retail prices, and

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(1) OJ L 283, 31.10.2003, p. 51.

— *enforcing social equity considerations*, by designing appropriate accompanying measures in the social policy and welfare systems framework which mitigate and make socially acceptable the impact of shifting taxes with a view to clean energy (support for vulnerable consumers, favouring the transition of economic sectors and/or regions, reduction of labour taxation).

3.6. In order to achieve the objective of qualified majority voting, the Communication presents two options, both avoiding the need to amend the TFEU and with no impact on the present sharing of competences between the Union and the Member States: specifically, the use of either the **specific passerelle clause** set out in the environment title (TFEU Article 192(2)) which would make it possible to reach the procedural goal for energy taxation measures which are primarily environmental in nature, or the **general passerelle clause** under TEU Article 48(7) for tax measures more generally designed for energy goals. In both cases, it would be for the Council to decide on the shift from unanimity to qualified majority.

3.7. Lastly, the Communication intends to drive on the development of democratic accountability in the framework of the Euratom Treaty, which covers sensitive matters of general interest, notably through the proposed involvement of both the European Parliament (which is presently merely consulted, but not on the conclusion of international treaties) and national Parliaments.

3.8. The substance of the Euratom Treaty would not be modified, apart from extending civil society information rights, ensuring cross-border consultation between Member States when there is potential cross-border impact, ensuring stronger involvement in such cases of the European Nuclear Safety Regulators Group (ENSREG) and enhancing the nuclear accident response capacity. It will therefore need to be reviewed under the ordinary Treaty revision procedure under TEU Article 48.

#### 4. General comments

4.1. The EESC welcomes this European Commission Communication to introduce qualified majority voting in the area of energy taxation in order to tackle the challenges of climate change. It also endorses a stronger role for the European Parliament and national Parliaments (presently not involved) in the decision-making process within Euratom, as well as the Commission's proposal to increase the involvement of civil society when shaping policies on nuclear energy, although the Communication itself necessarily takes a long-term approach to these developments. The EESC calls for the establishment of a closer link between future reports on the State of the Energy Union and the medium-term 2030 and long-term strategy proposed for 2050.

4.2. Whilst recognising that immediate measures have to be taken (since well over 80 % of CO<sub>2</sub> emissions are due to the production and use of energy) the EESC calls on the EU when using qualified majority voting, to remain committed to the subsidiarity principle and, in areas where it does not have exclusive competence, concentrate on areas in which shared objectives cannot be achieved more effectively at national, regional or local level. The same applies to the principle of proportionality, according to which the content and form of EU measures must not go beyond the objectives set out in the Treaties <sup>(2)</sup>.

4.3. The EESC notes with concern that in Communication COM(2019) 177 there is no mention of the gradualist approach contained in COM(2019) 8 Communication 'Towards a more efficient and democratic decision making in EU tax policy' which makes the case for a gradual transition in four steps to qualified majority voting under the ordinary legislative procedure in certain areas of shared EU taxation policy <sup>(3)</sup>. The EESC is conscious of the potentially controversial nature of certain types of energy taxation under consideration. We therefore strongly recommend that the Commission clarifies that a similar approach applies in this case as well such that the least controversial areas of taxation be identified for consideration in the first instance.

4.4. The EESC regrets that Communication COM(2019) 177 does not expand upon the potential types of specific tax decisions that might be discussed under qualified majority voting and urges the Commission to rectify this. The EESC would be concerned if decisions were made at EU level on energy taxation that trigger adverse distributional effects, like increasing energy poverty, for instance by removing subsidies on energy bills for the least well-off consumers. There are sensitive issues that affect Member States differently according to their dependence on fossil fuels and the availability of alternatives. A sensitive approach is needed that fits local circumstances and steps will need to be taken to ensure a just transition so that workers, consumers and communities are not left behind. In such cases, new energy taxation measures may require compensatory funding from the EU to offset the social and economic damage caused.

<sup>(2)</sup> SOC/626 Passerelle clause (see page 87 of this Official Journal).

<sup>(3)</sup> OJ C 353, 18.10.2019, p. 90.

4.5. Energy prices which are increasing faster than household budgets, income inequality across Europe and the costs incurred by the energy transition (decentralisation and digitalisation of electricity and gas markets) determine the degree to which energy poverty is present in a society <sup>(4)</sup>. The European Energy Poverty Index (EEPI) scores and ranks Member States' progress in alleviating domestic and transport energy poverty <sup>(5)</sup> and the Communication, drawing on the findings of the European Energy Poverty Observatory, should be linked to a European action plan aimed at eradicating energy poverty by targeting its root causes <sup>(6)</sup>. As mentioned in previous EESC opinions <sup>(7)</sup>, '*Energy efficiency and non-consumption do not in themselves constitute sources of energy*' and therefore cannot by themselves resolve the problems linked to climate change, security of supply and energy poverty.

4.6. Consumers are not gaining their fair share from EU efforts in the energy field because of the uncoupling of wholesale and retail markets <sup>(8)</sup>: due to a number of factors (such as late distribution unbundling, subsidies burden, and the high failure rate of new retailers), the historically decreasing prices in wholesale markets post-liberalisation are not passed on to retail markets.

EU energy user charge levels are already very high <sup>(9)</sup>. Given that approximately 40 % of the final price of electricity paid by European consumers is made up of taxes and levies, it is the Commission's duty to carry out an impact assessment of the prospective effects of energy prices, including with regard to the effects of tax harmonisation on the poorest households.

4.7. Without abandoning the link with environmental policy, closer coordination with broader industrial policy and consequent economic development could also allow for:

- on the one hand, better management of potential social tension (higher incomes for workers to offset the growing costs of energy) <sup>(10)</sup>, and
- on the other hand, better management of current European energy diversity: different national energy policies carried out to date can become an advantage if well managed at European level, by making use of such different and complementary alternatives in the framework of Energy Union policies.

4.8. Under either Article 192(2) TFEU on the special passerelle clause and or Article 48(7) TEU on the general passerelle clause, the development of a true Energy Union needs to go hand in hand with the transfer of sovereignty.

4.9. Despite progress made over the years in the energy field, partly due to EU policies (such as REN capacity increase) and partly due to international factors (such as more flexible LNG supply terms, coal indexation and lower prices), some problems (including the major ones listed below, under point 4.11) are still blocking further development of a true energy single market and denying consumers a fair share of benefits.

4.10. Major obstacles include the limited development of cross-border interconnection capacity, especially in the electricity sector, due to national decisions and to delays in European Union action to reach the electricity interconnection target of 10 % by 2010 and 15 % by 2030 (targets which are already very limited, insufficient and non-binding) <sup>(11)</sup>.

4.11. Social consensus should be among the main priorities, as the latest data show that 4-8 % of Northern/Western EU households' consumption budget goes on energy, compared to 10-15 % for Central/Eastern EU families <sup>(12)</sup>. With a huge toll paid also to 'energy poverty' indicated as a new social priority to be fought at any national and European level but still there.

<sup>(4)</sup> OJ C 198, 10.7.2013, p. 1.

<sup>(5)</sup> The European Energy Poverty Index (EEPI) [https://www.openexp.eu/sites/default/files/publication/files/european\\_energy\\_poverty\\_index-eepi\\_en.pdf](https://www.openexp.eu/sites/default/files/publication/files/european_energy_poverty_index-eepi_en.pdf)

<sup>(6)</sup> OJ C 341, 21.11.2013, p. 21.

<sup>(7)</sup> OJ C 345, 13.10.2017, p. 120.

<sup>(8)</sup> OJ C 383, 17.11.2015, p. 84.

<sup>(9)</sup> COM(2019) 1 final.

<sup>(10)</sup> In its previous resolutions, the European Parliament warned that the decarbonisation strategy could also cause '*massive increase in energy poverty*' (14 March 2013, Resolution on the Energy Roadmap 2050) and therefore called on the Commission to '*build bridges between social policy and energy policy*' (14 April 2016, Resolution on Meeting the antipoverty target in the light of increasing household costs).

<sup>(11)</sup> According to the Commission Expert Group, this level is gradually decreasing and some Member States will not reach the 10 % target in 2020, *Towards a sustainable and integrated Europe, Report of the Commission Expert Group on electricity interconnection targets*, November 2017, p. 25. See also OJ C 383, 17.11.2015, p. 84.

<sup>(12)</sup> COM(2019) 1 final.

## 5. Specific comments

5.1. Energy is a rigid system in which infrastructure and regulatory changes take a decade to be fully implemented, while competition continues to bite (as shown clearly by Chinese solar panels and the rise of the electric vehicles industry). A brand new, broader energy policy model is needed, including for instance getting added value for EU companies from research carried out on energy continuity linked to REN, or championing them in sectors such as e-cars, related last-generation batteries, hydrogen or wind turbines where there is a competitive advantage.

5.2. Complementary shaping and implementation of energy policy by the Commission in form of a roadmap is necessary as energy policy is more than taxes, and comprises in any event taxes on energy activities as well as on energy products. Previous experience in other fields shows that transferring sovereignty without having a true, complete Union in place may lead to strong disagreements (as was the case for Economic and Monetary Union).

5.3. The cost of energy has a direct and immediate impact on all companies and people's lives, and so the consequences of an unbalanced initiative on energy taxation have to be carefully considered. In this context, and based on the necessary social and economic impact assessment, the EESC welcomes the incoming Commission president's announcement of a new carbon border tax to ensure the competitiveness of European companies on the global market and avoid carbon leakage. In the event of job losses, new opportunities must be provided, and professional requalification and other negotiated solutions offered for involved workers.

5.4. While considering possible internal market distortion due to different levels of taxation on fossil fuel-based energy, the Commission should take into account that free trade agreements may have a similar impact through the dumping effects of third countries' various legal frameworks in the field of energy and competition. EU sectors of activity such as air, water and road transport, agriculture/fisheries, and energy-intensive industries targeted by the proposed taxation measures may be affected. Therefore, the EU should systematically require equivalence of its social and environmental legislation requirements for imported products in bilateral and multilateral trade negotiations <sup>(13)</sup>.

Brussels, 26 September 2019.

*The President*  
*of the European Economic and Social Committee*  
Luca JAHIER

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<sup>(13)</sup> OJ C 283, 10.8.2018, p. 83.

## ANNEX

The following amendments, which received at least a quarter of the votes cast, were rejected during the discussions:

**Point 4.5**

Delete:

~~Under either Article 192(2) TFEU on the special passerelle clause and or Article 48(7) TEU on the general passerelle clause, the development of a true Energy Union needs to go hand in hand with the transfer of sovereignty.~~

Votes in favour: 73

Votes against: 91

Abstentions: 11

**Point 1.1.2**

Amend as follows:

~~The EESC welcomes a debate on using the proposal to use the passerelle clauses to establish a qualified majority in the Council and a co-decision system with the European Parliament. In this new set-up, the EESC could play an important role in supporting the trilogue and should be involved.~~

While supporting several views expressed in the Communication, the EESC considers that efficient governance of the climate and energy strategy and greater coherence in EU legislation on energy taxation should take into account the concerns of European businesses, workers and other stakeholders, including consumers. The involvement and engagement of civil society, the support of Member States and the agreement and commitment of the social partners are important for the success of this process.

Votes in favour: 65

Votes against: 105

Abstentions: 9

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