

LETTER
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Joaquim Nunes de Almeida
Responsible for Directorates B, C, D
and F - Goods in the Single Market
and Enforcement

Hans Ingels
Head of Unit, Free Movement of
Goods

Giuseppe Casella
Head of Unit, Regulatory Barriers

Eurofuel's comments on the Ban on Using Liquid Fossil Fuels

TRIS procedure – 2019/651/A

Dear Mr Nunes de Almeida, dear Mr Ingels, dear Mr Casella,

On behalf of Eurofuel, the European Heating Oil Association, I would like to submit our serious concerns regarding a legislative act newly notified by the Austrian authorities within the TRIS registry under file number 2019/651/A, concerning the draft of the Tiroler Gas-, Heizungs-, und Klimaanlageverordnung (Tyrolean Gas, Heating and Air Conditioning Regulation), with the standstill date of 23 March 2020.

According to the new version of Article 2(5) of the current draft, use of liquid fossil fuels in central heating systems is to be banned both in new constructions and major renovations. A major renovation is the time-coherent renovation of a building where more than 25% of the surface of the building envelope undergoes renovation, unless the total cost of the renovation relating to the building envelope and the technical building systems is limited to 25% of the value of the building, excluding the value of the land upon which the building is situated.

This raises several concerns regarding:

- **Free Movement of Goods**

Such a legal ban on liquid fossil fuels will result in a decreasing end consumer demand for such products, but also for oil boilers – while boilers can be lawfully manufactured, marketed and used in other EU member countries.

Significant amounts of heating oil need to be imported each year in order to ensure domestic mineral oil supply (almost 600.000 tonnes of extra light heating oil were imported from Germany, Italy, Slovakia and Slovenia in 2018).

Quantitative restrictions on imports as well as “measures having equivalent effect” are forbidden according to Article 34 of the Treaty on the Functioning of the European Union (TFEU) and EJC case law. The law would massively limit or prevent the use of goods, thus substantially interfering with the principle of free movement of goods within the European Union.

The measure at issue is limited to only a part of the sovereign territory (legal case C-1/90 and C-176/90), but other Austrian states will adopt corresponding regulations. The decision of the European Commission will have a role model effect on all other federal states.

- **The justification to interfere with the Fundamental Right of Free Movement of Goods**

This measure is presented by the Tyrolean Regional Authority as a contribution to the national and EU-wide climate policy goals and is deemed justified due to the allegedly higher impact on the climate, particularly in view of CO₂ emissions.

Overriding environmental protection requirements, including climate protection, can indeed justify restrictive national measures; provided, however, that it is thoroughly assessed whether they are suited for ensuring that the alleged goal will be achieved and that such requirements are proportionate, i.e. that they do not go beyond what is necessary.

If the alleged purpose of the law is to reduce the CO₂ emissions, the actual impacts of other energy sources should not be disregarded. **Switching to alternative heating systems will not reduce the CO₂ emissions in the heating oil sector by 100%, as the CO₂ emissions of these other alternative heating systems must be accounted for.**

The Austrian energy mix means that fossil fuels are a big component of any heating system, be it heat pumps or district heating.

Moreover, other parameters influencing climate change and air quality should also be taken into consideration to ensure a fair approach for all competing technologies, such as particles, carbon monoxide (CO) and nitrogen oxide (NO_x). Wood-based heating systems such as pellet boilers have higher emissions than heating oil in these areas.

We believe that the condition of **proportionality** is also unmet.

1. Consideration of technical, functional and economic feasibility

Article 7(5) of the EU Buildings Directive 2018/844/EU clearly stipulates that *in relation to buildings undergoing major renovation, taking into account a healthy indoor climate, high-efficiency alternative systems should be used, in so far as this is **technically, functionally and economically feasible**.*

In new buildings, it can be assumed that technologically advanced alternatives to fossil fuels are more likely to be available, while the phase-out of fossil energy sources in the course of (major) renovations should take into account technical, economic and social circumstances due to diverse topographic and climatic conditions. For example, not all buildings can be supplied with grid-based energy and due to topographic conditions, it is, from a technical perspective, impossible or, from an economic perspective, extremely expensive, to switch to a biomass boiler or to heat pumps.

2. Interference with the right to property

As already mentioned, we expect as a consequence of this law a decrease of oil boilers. Under this premise, the fundamental right to protection of property embedded in the Additional Protocol to the ECHR Art. 1 needs to be mentioned as well.

A well-functioning oil boiler that might have been put into operation only recently must be removed in the course of a (major) renovation, because the use of a liquid fossil fuel is to be banned.

Not only does this obligation interfere with the right to property, but it also leads to major renovations being postponed or not being carried out to the extent originally planned due to excessive investment costs.

In view of the increase in the renovation rate in the space heating section to 3% stipulated in the Buildings Directive, such legal link between major renovations and mandatory removal of oil boilers will have negative impacts.

From a climate protection as well as a property protection perspective, **it is absolutely necessary to limit the ban on the use of liquid fossil fuels in the course of major renovations by stipulating wide-ranging derogations.**

As the Regulation in question does not envisage a transitional period and enters into force already after expiry of the standstill period, those EU member states having a contractual relationship with Austria have no time to react accordingly, which means that Austria cannot meet its obligations.

A Future with Climate-Friendly Liquid Fuels

The mineral oil industry is committed to promoting the development of low-carbon liquid fuels throughout the European Union. These low-carbon liquid fuels have the advantage to minimise the need for new infrastructure, which are costly for consumers.

The further development of liquid biofuels and other innovative forms of liquid fuels will allow for use of an increasing share - eventually 100% - of non-fossil liquid fuels in technologies that were originally designed for oil heating systems.

A ban on fossil heating oil would prevent innovations in developing low-carbon liquid fuels and market penetration of such technologies.

We would also like to stress that the notified act would be in open contradiction with the principle of 'technology neutrality' or a 'level-playing field' for all technologies¹, which is central in the European Union's approach to climate and energy policy.

Based on the above, we are convinced that the act notified by the Austrian authorities should be amended to comply with EU obligations. We are inviting the competent services of the European Commission to consider these concerns when taking position in the framework of the TRIS file 2019/651/A.

Yours sincerely,

Dr. Ernst-Moritz Bellinghen
President of Eurofuel

¹ European Commission: COM(2016)860, "Clean Energy For All Europeans", 30 November 2016.