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Background discussion paper

AN EU TAX ON THE PROFITS AND OWNERSHIP OF THE FOSSIL FUEL INDUSTRY

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Climate Action Network (CAN) Europe is Europe's leading NGO coalition fighting dangerous climate change. With 200 member organisations active in 40 European countries, representing over 1,700 NGOs and more than 40 million citizens, CAN Europe promotes sustainable climate, energy and development policies throughout Europe.

1. Introduction

Fossil fuels – coal, oil and gas – are by far the largest contributor to global climate change, accounting for over 75 per cent of global greenhouse gas emissions and nearly 90 per cent of all carbon dioxide emissions.[1] Fossil fuels need to be phased out – for the EU, coal should end by 2030, fossil gas by 2035 and oil by 2040 at the latest.

However, **fossil fuels remain a very profitable business**. The five big oil and gas firms have made $281 billion in profits in 2022 and 2023.[2] Global investments in fossil fuels only slightly decreased in the last ten years. In the EU, they increased substantially between 2019 and 2024 from 29 to 36 billion USD.[3] Because it remains very profitable, there is no incentive for companies with activities in the fossil fuel sector to phase out their operations and accompany workers in the transition process. The recent failure of the employers' organization in the gas sector, Eurogas, to adopt a Just Transition Agreement that would have guaranteed a Just Transition for the gas workers exemplifies this continuous resistance.[4] It has been reported that in the US, corporate profits after tax increased significantly less than fossil fuel industry profits in 2022. The signal is therefore to invest in the fossil fuel sector, as it performs better than the rest of the economy - the larger the share of fossil fuel assets in a portfolio, the bigger the gain. A tax on windfall or excess profits would help correct the misallocation of capital away from renewables and into oil and gas.

The transition to renewable energy must accelerate, which requires colossal investments in both the deployment of renewables and in energy savings, backed with new sources of funding. 22.5% of energy consumed in the EU in 2022 was generated from renewable sources. Yet, fossil fuels remain the largest source of energy. Higher penetration of intermittent energy sources, such as wind and solar, will bring new challenges to the power grid.[5] The EU must double its grid capacity by 2035 to accommodate the needed surge in renewable energy. Overall, annual gross investments needed to shift to 100% renewable energy by 2040 amount to €302 billion in 2030, €400 billion in 2035 and €411 billion in 2040.[6]

In that context, it is urgent to end fossil fuel subsidies, but also to tax the profits of the fossil fuel industry high enough in order to make this business less profitable while raising resources to invest in a fair transition towards renewable energy. But what does "fossil fuel industry" exactly mean? Which kind of taxes already apply to the fossil fuel industry in the EU? Could they be taxed more and better, i.e. avoiding loopholes? How much money could be raised? And how to ensure consumers won't have to pay the price?

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[1] UN, Causes and Effects of Climate Change

[2] Global Witness, US & European big oil profits top a quarter of a trillion dollars since the invasion of Ukraine

[3] IEA, World Energy Investment 2024 - Overview and key findings [from 1374 (2015) to 1116 (2024) billion USD]

[4] See industriAll, Gas employers deny gas workers a fair and green transition: This agreement, negotiated by workers and employers' representatives, aimed at ensuring that companies in the gas sector would develop Just Transition plans to anticipate the impact of the transformation on jobs and skills, provide quality training and job-to-job transitions, underpinned by workers' and trade unions' involvement.

[5] EEA, Renewable energy

[6] PAC Scenarios, Policy Brief: Grid capacity needs to more than double by 2035 to meet the EU's Paris Agreement Goals

These are some of the questions that we will be exploring. This discussion paper is informing the CAN Europe's position on a tax on the profits of the fossil fuel industry.

There have been calls to tax windfall or excess profits beyond energy, as other sectors made record profits following the war in Ukraine. Several EU countries have extended windfall profit taxes to other sectors like banks (Czechia), food and retail (Portugal) or even all sectors (Croatia, Spain).

In this discussion note, we are focusing on taxation of the fossil fuel industry. We notably look at the EU legislation that emerged with the fossil fuel price hikes following the Russian invasion of Ukraine as this sets a precedent. , from which we can draw lessons with a view to propose longer-term or permanent taxation options. It does not mean that targeting other sectors' windfall profits does not have its merit, for example, to curb inflation – but it goes beyond the scope of this paper.

2. What is "the fossil fuel industry"?

With this term, CAN Europe has been referring so far to companies involved in the extraction (i.e. mining and refining) of fossil fuels (coal, oil and gas); in building and operating infrastructure used to transport and/or store fossil fuels; companies involved primarily (more than 51% turnover) in trading and selling fossil fuels; and energy utilities who primarily (more than 51% of their turnover) consume fossil fuels to generate electricity.[7] This definition is directly inspired by the Fossil Free Politics campaign.

At the UN level, the Kick Big Polluters Out campaign has been using a different definition: "any company that has significant business activities in the exploration, extraction, refining, trading, specialised transportation of fossil fuels or sale of electricity derived from them". A company has significant business activities in fossil fuels if it publicly declares that it is involved commercially in the handling of a fossil fuel (exploration, extraction, refining, trading, processing, distribution to consumers) OR who promotes publicly that it has significant investments in such companies.

The definition used in Art. 2 of the 2022 EU Council Regulation on an emergency intervention to address high energy prices[8], which set a mandatory temporary solidarity contribution on fossil fuel companies, is more restrictive: EU companies and permanent establishments with activities in the crude petroleum, natural gas, coal and refinery sectors generating at least 75% of their turnover from economic activities in the field of the extraction, mining, refining of petroleum or manufacturing of coke oven products.

> → ***Building on the definition already used in EU law, we could seek to extend it by asking for a lower threshold, and for more fossil fuel-related economic sectors to be covered such as specialised transportation of fossil fuels,***

[7] See CAN Europe, How to stop the never-ending nightmare: Fossil Fuel Subsidies In The EU (page 49).
[8] EU, Council Regulation (EU) 2022/1854 of 6 October 2022 on an emergency intervention to address high energy prices

storage or sale of electricity derived from fossil fuels. However, if we ask for a very low threshold, it may heavily tax the profits from non-fossil fuels-related activities - which is not the goal, especially if these activities relate to renewables. We will therefore need to strike the right balance there. In order to disincentivise fossil fuels-related activities, the threshold could also be higher to start with, and be diminished over time.

3. EU-wide solidarity contribution on the fossil fuel industry: A precedent

In 2022, the Council of the European Union agreed to impose an EU-wide windfall profits tax (called solidarity contribution) on the fossil fuel industry, to redistribute the exceptionally high profits of certain actors in the energy sector ("surplus profit") towards vulnerable households and companies facing high energy prices.

This table displays the quarterly global profits in billions of USD for each company and the total of all their profits combined since Russia's invasion of Ukraine.

Company	2022 Q2	2022 Q3	2022 Q4	2023 Q1	2023 Q2	2023 Q3	2023 Q4	Total
Shell	11.472	9.454	9.814	9.646	5.073	6.224	7.306	58.989
BP	8.451	8.150	4.807	4.963	2.589	3.293	2.991	35.244
ExxonMobil	17.850	19.660	12.750	11.430	7.880	9.070	7.630	86.270
Chevron	11.622	11.231	6.353	6.574	6.010	6.526	2.259	50.575
TotalEnergies	9.796	9.863	7.561	6.541	4.956	6.453	5.226	50.396
Grand Total	**59.191**	**58.358**	**41.285**	**39.154**	**26.508**	**31.566**	**25.412**	**281.474**

Source: Global Witness

The solidarity contribution was temporary. The question is whether, after 2023, the fossil fuel industry will continue to make profits above the 2018-2021 reference period. The price of fossil fuels significantly reduced already in 2023, even if not down to the pre-crisis prices. This means that as designed in the 2022 Regulation, even if the tax would continue to apply throughout and beyond 2023, the proceeds would expectedly be lower.

Table 1: average prices pre-crisis 2018-2021, 2022, and 2023 (until November) (sources: European Commission, DG ENER Chief Economist, based on S&P Global Commodities, VaasaETT, Weekly Oil Bulletin)

Average	**Pre-crisis (2018-2021)**	**2022**	**2023 *(until November[13])***
Gas Wholesale *EUR/MWh*	23	123	41
Gas Retail *EUR/MWh*	69	137	116
Coal *EUR/ton*	70	283	122
Oil *EUR/barrel*	54	97	77
Diesel *EUR/L*	1.29	1.83	1.68

Source: European Commission

There are however **sound reasons to adopt a permanent tax on the profits of the fossil fuel industry**.

First, the prices of fossil fuels remain volatile, with the continuation of the war in Ukraine on the one hand, and the armed conflict in the Middle East on the other. Extreme weather conditions (including exacerbations by fossil-fuel-caused anthropogenic climate change) can also affect hydropower storage or nuclear production, with consequences on demand for gas-fired power generation, and ultimately on the price of energy and associated profits.[9]

Second, adopting a permanent tax on windfall or excess profits would trigger immediate taxation of windfall profits when they happen, without delays due to putting in place new legislation and implementation processes at the national level. It would also avoid difficulties regarding retroactive application in case windfall profits would take place again in the future.

Thirdly, it could make sense to consider that any profit beyond the regular profits (compared to a reference period) or above a determined threshold of return on investment, should be taxed because it incentivizes further investments in fossil fuel-related activities. We will see below the difference between a windfall profit and an excess profit tax, as well as the pros and cons.

The difference between windfall profits and excess profits:

Windfall profits are the result of an unforeseen external 'one-off' event, possibly combined with speculation. Windfall profits are those that do not stem from direct and planned actions of a firm such as productivity gains or innovation, but from unanticipated external changes in the market conditions (such as a surge in commodity prices that can be due to a war, a pandemic, etc.).[10] Such changes could not have been foreseen at the time when the initial investment decision had been taken. The windfall profit can also be due to the company's speculation on the prices to maximize profits.[11]

Excess profits are defined as the returns that a company makes over and above what is considered as a normal return on its assets. A recent IMF research paper considers a normal return to be at 10%. Proposals have been made to distinguish between “base” and “super” excess profits, with progressive taxation rates applying depending on the level of profits (rate of return between 10% and 15% or above 15%). It has been argued that taxing profits is an impetus for the company to produce more profits, so that it may increase its net gains despite the additional layer of tax on income. Applying growing tax rates depending on the quantity of excess profits would help avoiding such a move.

Excess profits can have an important signalling function. They highlight scarcity and provide an incentive for market entry or for expanding production capacities. Consequently, they attract resources to these activities.[12] Systematically taxing excess profits from fossil fuel-related economic activities would therefore contribute to removing such incentives. More generally, excess profits (in the fossil fuel sector and beyond) are a symptom of a non-competitive market and monopolistic positions. They fuel the concentration of wealth and inequality.[13]

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[9] European Commission, Report on Chapter III of Council Regulation (EU) No 2022/1854 of 6 October 2022 on an emergency intervention to address high energy prices

[10] European Parliament, The effectiveness and distributional consequences of excess profit taxes or windfall taxes in light of the Commission's recommendation to Member States

[11] Institut La Boétie, Taxer les superprofits pour libérer l'économie réelle

[12] European Parliament, The effectiveness and distributional consequences of excess profit taxes or windfall taxes in light of the Commission's recommendation to Member States

[13] UNCTAD, Corporate Rent-Seeking, Market Power And Inequality: Time For A Multilateral Trust Buster?, 2018

To calculate ***the windfall profits***, the average earnings approach is generally used. The average earnings approach involves calculating the windfall profit tax base as the total net income during the crisis period minus the average earnings during a previous period of years of stable profits (reference period).

The invested capital approach is generally used to calculate ***the excess profits***: it considers everything earned above a specified return rate on capital as excessive and subject to excess profits taxation. During World Wars I and II, for example, various countries implemented excess profits taxes with tax rates up to 100%. Outside wartime, Germany used excess profits taxation after its unification while Japan implemented it in 2012 to finance reconstruction after a massive earthquake.[14]

Under the EU 2022 regulation, taxable profits, as determined under national tax rules, generated in 2022 and/or 2023 above a 20 % increase of the average taxable profits made in the four fiscal years from 2018 to 2021, were subject to the solidarity contribution. This means all profits above 120% of the preceding 4 years' average. The tax was targeting windfall profits. To define windfall profits, the Council Regulation has relied on the average earnings method (refers to past profits as normal returns).

> → **One solution ahead is to call for the solidarity contribution to be made permanent.** For such a windfall profits tax, the tax base could use the 2018-2021 reference value, building on existing legislation. We could demand a lower threshold than 20% above the 2018-2021 profits, or even consider that any profit above the 2018-2021 average should be taxed. However, under the 2022 EU Regulation, the baseline is a nominal amount (as opposed to a percentage on return as for the excess profit calculation). Over time, the nominal amount above the baseline is expected to increase with inflation even if profits do not increase in real terms. In addition, a windfall tax would not capture all excess profits. **Therefore, a permanent excess profit tax based on the invested capital approach/return on investment method may be more appropriate. We could also in that case only support a deduction for investments into renewable energy and related storage capacity, as an additional lever to shift the business of these companies.**

Tax rate: The temporary solidarity contribution applied in addition to the regular taxes and levies applicable according to the national law of a Member State. The minimum rate determined by Member States must not be below 33%. Five Member States applied higher rates than the minimum 33% - up to 60% in Romania, 75% in Ireland and even 80% in Slovenia - but the latter expected to cover few companies or permanent establishments.

If in the future, the temporary solidarity contribution is replaced by an excess profit tax, the tax rate could be higher. An IMF paper suggests to have the tax rate higher than the Corporate Income Tax "The overall tax rate on excess profits, while ultimately a policy choice, can be considerably higher than the statutory corporate income tax rate since the excess profits taxes are not distortionary. Historically, the excess profit tax rate reached 95 per cent in the United States. However, current international tax

[14] The Left: Excess profits tax: Estimating the potential tax revenue gains for the European Union, 2022

pressures in the form of profit shifting and tax competition somewhat put a limit on the excess profit tax rate". This IMF research paper considers a normal return to be at 10%. Proposals have been made to distinguish between "base" and "super" excess profits, with progressive taxation rates applying depending on the level of profits (rate of return between 10% and 15% or above 15%).

> → **Maintaining the existing tax design would neither be sufficient to generate significant proceeds, nor help undermine the business case for fossil fuels. We could argue for a higher tax rate than 33% (Ireland, for example, applied a 75% tax rate when implementing the Regulation at the national level), up to 100%. The tax rate could alternatively start at 33% (or higher) and increase over time.**

> → **We could argue for a tax on excess profits, defined as a return on total assets (ROTA) above a determined percentage (10% or a lower rate).[15] The tax rate could be higher when the level of return is higher (super-profits).**

Use of proceeds: The Regulation includes a list of possible uses that aim at mitigating the effects of high energy prices on customers (in particular vulnerable households), including by promoting their investments into renewables or energy efficiency investments. Member States can also support companies in energy-intensive industries provided that such support is made conditional upon investments into renewable energies, energy efficiency or other decarbonisation technologies.

Amount of proceeds: Even if not final figures, the estimated total proceeds for 2022 reached EUR 17.5 billion, while the actually reported collected proceeds for 2022 reached EUR 6.8 billion.[16] Final numbers for 2022 and 2023 will be published by the European Commission in 2025.

4. An EU-wide tax or national taxes?

The Council Regulation mandated the Member States to apply the solidarity contribution or enact equivalent national measures.

Those opposing additional taxes on the fossil fuel industry include … the fossil fuel industry and its lobby arm. For example, the EU solidarity contribution has been challenged in court by ExxonMobil based on various grounds[17], while the company's spokesperson said: "This litigation is driven by our concern about the unintended long-term effects of this policy on the competitiveness of European industry".[18] It is the opposite since the record profits of the fossil fuel industry is having adverse

[15] University of Greenwich, Working Paper Series: A progressive excess profit tax for the European Union
[16] European Commission, Report on Chapter III of Council Regulation (EU) No 2022/1854 of 6 October 2022 on an emergency intervention to address high energy prices
[17] The suit argues that the measure is a tax, which is a right reserved for national governments, and contests the use of the EU Treaty's Article 122, an emergency procedure that excludes the European Parliament, to enact the legislation and allows the Council to adopt the measure via a qualified majority vote (rather than unanimity).
[18] Politico, Exxon sues over EU fossil fuel 'windfall tax'

inflationary impacts on the whole economy, making European businesses less competitive. The lawsuit notably argues that the measure is a tax, which is a right reserved for national governments, and contests the use of the EU Treaty's Article 122, an emergency procedure that excludes the European Parliament to enact the legislation and allows the Council to adopt the measure via a qualified majority vote (rather than unanimity). The urgency to protect people and businesses affected by the increase in energy prices when the regulation was adopted in 2022 is indisputable. However, for a permanent tax, unanimity would be required in the Council – or the EU Treaties should be amended to ease decision-making processes on taxation.

The case brought against the Council by ExxonMobil also complains about the supposed retroactivity of the measure, the freedom to conduct a business (art 16 of the EU Charter of fundamental rights) and the right to property (art 17 of the EU Charter of fundamental rights) and the principle of equal treatment (arts 20 and 21 of the EU Charter of fundamental rights).

Other fossil fuel companies have been suing Germany, the Netherlands and Denmark for implementing the solidarity contribution, based on the Energy Charter Treaty.

> → **A coordinated introduction of excess profit taxes is preferable to reduce the scope for aggressive tax planning and tax avoidance (profit shifting) within the EU. The solidarity contribution was providing a common frame with minimum common requirements (minimum tax rate, the definition of excess profit, etc.) but left room for Member States to design the tax taking into account national circumstances. Such an approach combining a common frame and national leeway seems to make sense. Making the tax permanent would most probably require unanimity in the Council, pending a reform of the EU treaties. We could also call for a temporary tax, to be assessed after a certain period and possibly subsequently extended - but unanimity would likely be required too, except in case of an emergency economic situation with "severe difficulties in the supply of certain products, notably in the area of energy" (art 122.1 TFEU).**

5. Fossil fuel industry taxation in the UK: any lessons learned?

In response to public pressure, the UK government established an 'Energy Profits Levy' (EPL), applying to companies involved in the extraction of fossil fuels in the UK continental shelf. The Energy Profits Levy was initially set as an additional 25% tax on UK oil and gas profits on top of the existing 40% headline rate of tax, taking the combined rate of tax on profits to 65%.[19] It came into effect halfway through 2022, meaning only profits made after this were taxed. The rate was later raised to 35% as of 1 January 2023. Although it was supposed to run through to 2028, in May 2023 the UK government announced that if oil and gas prices returned to 'historically normal levels' the levy would be scrapped and taxes on UK oil and gas producers would

[19] UK Parliament, Energy (Oil and Gas) Profits Levy Bill 2022-23

return to 40% overall.[20] The recently elected British government announced an increase of the windfall tax on North Sea oil and gas producers from 35% to 38% and extended the levy by one year.[21] This kind of tax is a top-up tax.

A major loophole with this tax is that oil producers could offset the tax they paid against further investments in oil and gas. Fossil fuel companies could indeed deduct 91% of their capital investment costs from their corporation tax bill. The 'windfall tax' may have, on the surface, attempted to tackle the huge profits being raked in by fossil fuel companies in the midst of the cost of living crisis – but it also made it cheaper for these companies to extract the fossil fuels contributing to the sky-high cost of living in the first place. The loophole included in the energy profits levy has massively increased the amount of tax relief which fossil fuel companies will potentially receive. Removing the perverse tax reliefs extended to the oil and gas industry could free up almost £13bn of tax revenue between 2024 and 2026.[22]

Oxfam is proposing that such a tax would become permanent, the tax base would only be profits that are 10% in excess of average profits over the years 2010-2021, and the tax rate would be 75% or 90%. Regular profits would continue to be taxed at 40%.[23]

The scope is more narrow than the EU solidarity contribution since it only covers companies involved in the extraction of fossil fuels. The possibility to deduct capital investments in oil and gas provides an incentive for further extraction and provides contradictory signals to the industry. Regular profits are taxed at 40% (10% more than companies operating in other sectors), but that is actually a low tax rate compared to Norway, eg, where oil companies pay a 78% marginal tax rate on profits. However, the Norwegian government takes 88% of the investment costs, which is also encouraging further extraction and represents a loss for public finances.[24]

> **→ An EU-level coordinated top-up tax on Member States' existing corporate income tax is a mechanism we could support. The top-up tax rate could be the same for all Member States and would be applied at the national level. Such a mechanism has the advantage of adding a punitive tax on all profits.**

6. Distributional impacts

Distributional impacts depend on the extent to which the fossil fuel industry attempts to pass the tax on to energy consumers or to workers rather than shareholders.

[20] Oxfam, Payment overdue: Fair ways to make polluters across the UK pay for climate justice
[21] Reuters: UK increases windfall tax on North Sea oil producers
[22] New Economics Foundation, The windfall tax was supposed to rein in fossil fuel profits. Instead it has saved corporations billions
[23] Oxfam, Payment overdue: Fair ways to make polluters across the UK pay for climate justice
[24] WWF, Norway doubles down on fossil fuel as rest of the world leans to greening COVID-19 recovery packages and OECD, Inventory of Support Measures for Fossil Fuels: Country Notes

Therefore, the tax may need to be combined with other flanking measures to avoid such a scenario.

Factors influencing whether the industry will likely pass the cost onto consumers include the level of market competition (in oligopolistic situations, consumer prices can be more easily raised because there is no competition from other players); the elasticity of demand (if the demand is not elastic, the price increase may not trigger a reduction in consumption, ie the company may therefore be tempted to indeed reflect the cost of the tax in the retail price as it will have a limited impact on sales); and the existence of a state intervention to regulate prices. The possibility for the industry to preserve the profit margin by reducing labour costs largely depends on workers' bargaining power.

In Italy and Spain, competent authorities were empowered and supported to set out regulations and carry out audits to avoid the cost of the solidarity contribution being passed to consumers. Price caps and targeted assistance to low-income households are one of the ways to make sure they do not lose out.[25] Other proposals have been made, such as an energy billing structure which lowers and fixes the price paid by households on their essential energy needs. A higher price is then charged by retailers for higher levels of usage. The policy is accompanied by allowances for households with specific vulnerabilities and/or additional energy needs (disabled persons, etc), as well as households making the transition to all-electric energy consumption.[26]

Possible flanking measures would require further research.

> → **We could ask for flanking measures such as price caps and other pricing measures aimed at guaranteeing a right to energy for essential needs while encouraging a reduction in luxury energy use. Targeted assistance to low-income households is needed anyway as one element of response to tackle energy poverty, and could be considered as well (cf using the proceeds of the tax).**

It is important to bear in mind that not taxing the profits of the fossil fuel industry also has adverse distributional impacts: A recent study of fossil fuel industry profits in the US in 2022 demonstrates that those profits almost exclusively benefitted the top wealth owners: 51% of all profits claims by US beneficiaries are held by the top 1% of wealth owners, and 84% by the top 10%. In contrast, the bottom half of the population receives hardly any profits at all. This extremely unequal distribution of profits has been shown to reinforce existing racial and ethnic inequalities in the US.

[25] Oxfam, Payment overdue: Fair ways to make polluters across the UK pay for climate justice

[26] New Economics Foundation, Delivering a National Energy Guarantee

7. Other tax designs proposed

7.1. The climate damages tax

A climate damages tax has been proposed to target the extraction of coal, oil and gas, ie a fee on the extraction of each ton of coal, a barrel of oil, or a cubic meter of gas, in line with the amount of CO2 embedded within the fossil fuel. This could reportedly generate at least $210B per year at the global level.[27]

Fossil fuel producers, who pay royalties in the countries where they operate, would pay an extra amount on the volume (per tonne) they extract. The tax rate (initially 5% per tonne of CO2 equivalent) would increase over time. 50% of the revenue generated from extraction in high-income countries would contribute to the Fund for Responding to Loss and Damage, while low-income countries would retain all revenue (with a sliding scale between the two).[28] As for the windfall/excess profit tax, a mechanism should be in place to avoid the cost being passed to consumers or workers.

The advantage is that the quantity of oil, gas and coal extracted is easy to know, and the fee would therefore be straightforward to calculate. However:

> → **Like the UK Energy Profits Levy, such a tax would only apply in producing countries[29]. While we still have producing countries in the EU, to raise substantial resources in the EU, we favour an EU-level tax that looks at profits made beyond extraction. This is without prejudice of supporting a climate damage tax at the global level, or high tax rates on fossil fuel extraction in the countries concerned.**
>
> → **There is a risk to see such a tax overlap with the Emission Trading Scheme (ETS), which is also taxing carbon.**

7.2. A tax on past greenhouse gas emissions

In 2024, Vermont became the first state in the United States to pass a law that requires energy companies to pay for part of the damages from extreme weather events. Under the legislation, the cost to Vermonters and the state of the emission of greenhouse gases from 1995 to 2024 will be split among energy companies based on their share of global emissions during that time. A similar Bill is being examined at the federal level.[30] Other US states are considering similar measures.

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[27] CAN Europe, New resources for public climate finance and for the Loss and Damage Fund: Exploring taxes and levies at EU and multilateral level

[28] Stamp Out Poverty, The Climate Damages Tax

[29] Eurostat, Coal production and consumption statistics (primarily Germany, Poland, Bulgaria, Czechia, Romania and Greece for coal), Natural gas supply statistics (primarily Netherlands, Romania, Germany, Italy and Poland for natural gas) & Oil and petroleum products - a statistical overview (primarily Italy, Romania and Denmark for oil)

[30] Jones Day, Vermont Law Requires Energy Companies to Pay for Climate Change Damage

Fossil fuel companies concerned would have to contribute to a so-called Climate Superfund, via an annual fee based on their past emissions. This is different from the above-mentioned climate damage tax where the levy on fossil fuel companies is based on the emissions from their ongoing operations, starting when the measure is adopted.[31]

The Bill has been criticised by oil companies for applying to past activities legal at the time (retroactivity) and for leaving unclear the amount of the fee due (as the cost referred to in the law is still to be calculated, as well as the allocation to various companies).[32] The US Chamber of Commerce and the American Petroleum institute filed a lawsuit against this law.

> **→ This mechanism has the benefit of seeking to recover the cost of decades of climate impacts. The method of calculation of the tax base seems complex (including how to link the past emissions with the damage caused in a specific territory) and may open the door to disputes. In case companies evolved through mergers and acquisitions, or some closed down since the starting date for the calculation of the damages, this may make the allocation of the fees to various companies complex. Also, companies would have to pay for past emissions, but shareholders who got dividends for decades seem to go untouched. Further developments regarding this law and similar initiatives in other US States would be worth following up on.**

7.3. A broader tax on the excessive ecological footprint

Eurodad has been exploring a tax on excessive ecological footprints. This would cover fossil fuel extraction and processing, but it would go beyond, covering all overconsumption of natural resources, whether by wealthy individuals or by corporations.[33] This proposal is definitely worth exploring in more detail, as it combines progressivity (taxing the wealthy individual's overconsumption rather than the average people in Europe) and the need to tackle the overconsumption of finite material resources, which is one of the main drivers of CO_2 emissions and climate change. The European Commission and the European Parliament commissioned a pilot study on this topic.

> **→ This proposal could interestingly contribute to aligning our taxation system with the need to reduce the use of material resources in order to bring back the economy within planetary boundaries. We could imagine a tax on the fossil fuel industry being extended to other material resources along the road. Taxation of individual consumption though would probably be tackled through another mechanism. CAN Europe should keep a close watching eye on the further development of this proposal, but meanwhile call for a tax on the fossil fuel industry inspired from the solidarity contribution as this could be operationalized faster.**

[31] Global Witness, Why the UK government should get the oil industry to contribute towards climate loss and damage
[32] American Petroleum Institute, IN RE: S.259 – "An Act Relating to Climate Change Cost Recovery"
[33] Eurodad, Make polluters pay: How to tax excessive ecological footprints

7.4. A tax on highly polluting assets

Lucas Chancel has been proposing a top-up on a wealth tax, based on the ownership of stock in the world's leading oil and gas companies. A discount would be applied when fossil fuel companies invest in renewable energy. If companies shifted all their operations to renewable energy supplies, then their shareholders would no longer face the pollution wealth tax top-up. According to these estimates, applying a 10% tax rate on the value of carbon assets owned by global multimillionaires would generate at least $100bn in one year (capital gains tax). A tax on "dirty" dividends, i.e. dividends related to polluting investments, would be another solution (taxing dividends). A tax on the transactions of such assets would yet be a third option.

> **→ CAN Europe is demanding a tax on extreme wealth as a way to reduce inequality, address pollution by the wealthiest and finance a just transition. Supporting an additional tax on ownership of fossil fuel assets is an option that we would support. This question relates to the possibility of a taxonomy labelling polluting activities. This being said, Commissioner Designate Dombrovskis announced in October 2024 that the European Commission will launch a study examining wealth-related taxes in the EU to support an informed debate and that he "supports global discussions on wealth taxation in international fora such as the OECD, the G20 and the UN". In that framework, CAN Europe could plead for a higher tax rate on carbon assets. How to shield workers and consumers, however, remains a relevant question.**

8. Conclusion

This background paper briefly analysed taxes that have been applied to the profits or ownership of the fossil fuel industry in the EU, the UK and the US, as well as tax designs that have been proposed but not implemented yet. Among those options, we selected those that cannot be claimed to duplicate taxes that already exist at the EU level (ETS); that are progressive in essence as they target profits and ownership of fossil fuel companies rather than consumers; that are implemented beyond the periods of temporary windfall profits; and that are not overly complex in order to provide clarity about the amount of the fee due.

In light of those criteria, three tax designs appear particularly promising:

> **→ A top-up tax on Member States standard corporate taxes – taking inspiration from the UK Energy Profits Levy.**

> **→ A tax on the excess profit of fossil fuel companies (excess profits preferably defined as return on capital investment above a certain percentage), which could be part of an excess profit tax covering also other or all sectors of the economy. The EU solidarity contribution on windfall profits and academic and IMF research on excess profit taxes provide a robust basis for such a tax.**

→ **A tax on fossil fuel wealth on top of a tax on extreme wealth, i.e. a shareholder pollution top-up tax (taxing ownership of fossil fuel assets, and dividends or transactions of such assets). This builds in particular on academic research.**

Other options deserve a close watching eye, such as the US taxes on past greenhouse gas emissions, or the ongoing research on broader taxes on the excessive ecological footprint.

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